



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT



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August 20, 1999

In Reply Refer To:  
1278 (P)  
CA-944

EMS TRANSMISSION: 8/20/99  
Information Bulletin **No. CA 99-80**

To: AFO's, - Attention: FOIA Coordinators

From: DSD, Support Services

Subject: Final California FOIA Desk Guide

Attached is the final Freedom of Information Act, (FOIA) Desk Guide. This Guide was prepared by the State Records Manager and State Records Administrator at the request of the FOIA Coordinators within the State. The Guide is meant to include current instructions, regulations, information and guidance consolidated from various sources. The Guide is to be used as a quick and easy source of reference to assist you, and other office technical staff, with preparation of FOIA responses to the public.

While we strive to be consistent in processing and handling FOIA requests within the State and within the Bureau, we often find that other agencies interpret the Act differently. Please be aware that we may not have the same policy in handling our records as other federal agencies. As the FOIA is challenged in court, our guidance on handling of BLM records is often updated. Therefore, this guide is subject to change. We will keep you informed of updates as they occur.

Note: No electronic copy is available of the Department FOIA Handbook, which is listed as Appendix 3 to this Guide. If you do not have a copy of the Handbook, please contact Louise Tichy, State Records Manager, through E-Mail or at (916) 978-4301 and a hard copy will be forwarded to you.

**Signed**  
**Annisteen Pack-Lovelace**  
**Acting DSD, Support Services**

Authenticated  
AJ Ajitsingh  
Records Management

1 - Attachment:  
CA FOIA Desk Guide (136 pp.)

Distribution:  
Larry Weitzel, CA-941  
Mary Lou West, CA-912

**CALIFORNIA**

**FOIA**

**DESK GUIDE**

## **ACKNOWLEDGMENT**

This desk guide was prepared at the request and recommendation of the California Field Office FOIA Coordinators. Completion of the guide was a joint effort of the State FOIA Coordinator, Larry Weitzel and the State Records Manager, Louise Tichy. A special thank you to the following individuals for their suggestions and contributions to the content of this document:

Mary Lou West, California State Office  
Larry Mercer, Bakersfield Field Office  
Loretta Pedersen, Ridgecrest Field Office  
Doran Sanchez, California Desert District.

Thank you to Cheryle Meyer, Administrative Assistant, State Office Support Services for her assistance with formatting, and A.J. Ajitsingh for making this document available on the California Intranet.

August 1999

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“The Freedom of Information Act (FOIA) is meant to ensure that the public has access to information that is maintained by the government. FOIA also recognized that the government must safeguard certain information that falls under one of the nine FOIA exemptions. Some of the requirements of the Electronic FOIA Amendments of 1996 ensure access to government information maintained in all formats (e.g. E-mail, back-up tapes), and makes more information available to the public electronically.”

## **SECTION IV(A): FOIA/LEGISLATIVE HISTORY/OVERVIEW**

### **HISTORY OF FOIA**

The Freedom of Information Act (FOIA) establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the United States Government are accessible to the people. This was not always the approach to Federal information disclosure policy. Before enactment of the FOIA in 1966, the burden was on the individual to establish a right to examine these Government records. There were no statutory guidelines or procedures to help a person seeking information. There were no judicial remedies for those denied access.

The FOIA evolved after a decade of debate among agency officials., legislators, and public interest group representatives. It revised the public disclosure section of the Administrative Procedure Act.

With the passage of the FOIA, the burden of proof shifted from the individual to the Government. The “need to know” standard has been replaced by a “right to know”. The Government now has to justify the need for secrecy. Amendments were made to the FOIA in 1974, 1976 and 1996, because of the broad interpretations the agencies were giving in areas as fees, time delays, and administrative details. Requirements such as the listing of records withheld, withholding only portions of the records withheld, National defense and investigatory files were also included in the requirements.

Because Sec. 552(a)(6) provides appeal rights to the FOIA requester denied access to records or parts of records, hundreds of decisions by the courts have been made since 1966 which have further clarified the FOIA process, and interpreted terms within the law.

The FOIA covers all records under the custody and control of Federal Executive Branch agencies. It does not apply to Congress or the courts, nor does it apply to records of state or local governments. Nearly all state governments have their own FOIA-type statutes.

The Department of Justice is the agency responsible for coordinating administration of the FOIA and encouraging agency compliance.

## FOIA/PRIVACY ACT CONTACTS

DOI FOIA/PA Officer . . . . . Alexandra Mallus . . . . . (202)208-5342

Bureau FOIA/PA Officer                      Marilyn Legnini . . . . . (202) 452-5013  
WO 520

CA FOIA Officer . . . . . Tony Staed . . . . . (916) 978-4611  
DSD, External Affairs

CA FOIA Coordinator/ . . . . . Larry Weitzel . . . . . (916) 978-4409  
Privacy Act Officer . . . . . Records Administrator . . . . . FAX (916) 978-4416

CA FOIA (Electronic) . . . . . Mary Lou West . . . . . (916) 978-4412  
External Affairs

CDD FOIA Coordinator . . . . . Doran Sanchez . . . . . (909) 697-5220  
Public Affairs Specialist . . . . . FAX (909)697-5296

### DOJ WEB SITE

<http://www.usdoj.gov/oip/oip.html>

### DOI FOIA HOMEPAGE

<http://www.doi.gov/foia/>

### FOIA WEB SITE

[http://web.blm.gov/internal/wo-500/wo-520/info\\_access.html](http://web.blm.gov/internal/wo-500/wo-520/info_access.html)  
Information Access Policy (FOIA and Privacy Act)

### EFOIA HOMEPAGE

<http://www.blm.gov/nhp/efoia/>

**CALIFORNIA FOIA COORDINATORS**

May 1999

<b>OFFICE</b>	<b>COORDINATOR</b>	<b>PHONE NUMBER</b>	<b>FAX NUMBER</b>
State Office	Larry Weitzel	916-978-4409	916-978-4416
Bakersfield	Larry Mercer	805-391-6010	805-391-6040
Bishop	Steve Addington	760-872-4881	760-872-2894
Folsom	Deane Swickard	916-985-4474	916-985-3259
Hollister	Bob Beehler	408-630-5000	408-630-5055
CA Desert District	Doran Sanchez	909-697-5220	909-697-5296
Ridgecrest	Loretta Pedersen	760-384-5410	760-384-5499
Palm Spr.-So. Coast	Rosemary Rusk	760-251-4805	760-251-4899
El Centro	Elaine Briggs	760-337-4440	760-337-4490
Barstow	Theresa Johnson	760-252-6012	760-252-6098
Needles	Elaine Downing	760-326-7005	760-326-7099
Alturas	Adele Enderlein	530-233-4666	530-233-5696
Arcata	Linda Roush	760-825-2300	760-825-2301
Clear Lake	Dave Fatch	707-468-4053	707-468-4027
Eagle Lake	Jeff Fontana / Linda Hansen	530-257-0456	530-257-4831
Redding	Frank Velarde	530-224-2100	530-224-2172
Surprise	Susan Stokke	530-279-6101	530-279-2171



**FREEDOM OF INFORMATION ACT/PRIVACY ACT  
REGULATIONS AND GUIDANCE**

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**FEDERAL LAWS AND REGULATIONS**

5 U.S.C. 552	Public information; agency rules
28 CFR Part 16 (1998)	DOJ FOIA Regulations
43 CFR Part 2, Subpart A&B	DOI FOIA Regulations
43 CFR Part 2, Subpart D	DOI Privacy Act Regulations

**DEPARTMENT OF JUSTICE**

Annual FOIA Guide and Privacy Act Overview (Mailed annually to each Field Office)

**DEPARTMENT OF THE INTERIOR**

383 DM 15	DOI Guidance on the FOIA
383 DM 1-14	DOI Guidance on the Privacy Act

Available on DOI web page:

Solicitor's Memorandum	5/8/98 Requests for Location Data, Cultural Resource Sites
Solicitor's Memorandum	5/21/97 Requests for Location Data, Endangered Species
Office of the Secretary Memo	6/17/94 Processing FOIA Requests for Names and Home Addresses

**BLM WASHINGTON**

BLM Manual 1220.11C	Agency Records Under FOIA
BLM Manual 1278	<b>External Access</b> to BLM Information
BLM Manual 1203, App.1	1278 - <b>Authority to Sign</b> Freedom of Information Act (FOIA) Responses
WO IB 97-121	Supreme Court Decision on BLM <b>Mailing List Case</b>
WO IB 99-144	Release of BLM Criminal Case Investigation Files, Including Incident Reports to State and Local Law Enforcement Officials
WO IM 94-207	Policy for <b>Types of Agreements</b> to Share, Exchange or Purchase Data
WO IM 95-088	Public Access to Wild Horse and Burro Adoption Information
WO IM 95-161	Memorandum of Understanding with Interagency Groups to Identify FOIA and Records Management Activities

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WO IM 95-164	Confidential Handling of <b>Oil and Gas Informal Expressions of Interest</b> Filed Under 43 CFR 3120.1(e) by the Public Requesting Lands to be Offered for Competitive Lease Sale
WO IM 96-060	<b>Processing of Temporary Directives</b> and <b>Posting on the Internet</b> Internal BLM Home Pages
WO IM 96-060, Chg. 1	Clarification of <b>Review and Processing of Temporary Directives</b> and Posting on the Internet Internal BLM Home Pages
WO IM 96-060, Chg. 2	Further <b>Clarification of Review and Processing of Temporary Directives</b> and Posting on the Internet Internal BLM Home Pages
WO IM 96-114	Secretarial <b>Review of Mineral Patents</b> Pursuant to Secretarial Order 3163 and Bureau Instruction Memorandum 93-266
WO IM 96-136	ref. for <b>Harm Statement Requirements</b>
WO IM 96-175	Handling Requests for Paleontological Locality Information
WO IM 97-021	Processing Requests for Radio Frequency Assignment Information Regarding Endangered Species Locations and Law Enforcement
WO IM 97-031	Withholding Contractor Proposals Under Exemption 3 of the FOIA
WO IM 97-039	Records Required Electronically Under P.L. 104-231
WO IM 97-046	Implementation of the Freedom of Information Amendments of 1996
WO IM 97-094	Interim Guidance - Records Access Categories List
WO IM 97-109	New Procedures for Evaluating Comment Letters Submitted on Proposed Agency Initiatives/Respondents Personal Privacy Interests
WO IM 97-138	Providing Portions of Purchase Cardholders Lists Pursuant to the FOIA Frequently Requested Records
WO IM 97-182	Safeguarding of Bureau Electronic Privacy Act Records and Privacy Act Access Restriction Notices
WO IM 97-183	Making Records Available Via the BLM Electronic Reading Room HOMEPAGE Requirements by the 1996 FOIA Amendments

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WO IM 98-067	Interim Guidance: Cost Recovery Rates for Public Purchase of Automated Land and Mineral Records System Reports and Data
WO IM 99-063	Cost Recovery Fee Schedule for Public (see Appendix 4)
WO IM 99-107	Procedures Affecting Grazing Files Requested Under the FOIA
WO IM 99-112	Solicitor's Memorandum on Openness and Confidentiality: A Primer on Privileges
DW IB 95-4077	Records Administration Guidance for Information Stored and Transmitted Electronically
DW IM 96-4028	Requests for Listings of Bureau <b>Electronic Mail Addresses</b>
IRM Bulletin 96-04	Processing FOIA Requests for <b>Personal and Personnel-Related Information</b>
Special Guidance	<b>FOIA Exemption Check List</b>
FOIA Officer Note	7/9/99 Request for Wild Horse and Burro Database (refer to WH&B Program Manager)

## CALIFORNIA STATE OFFICE

CA IB 97-002	Applicability of Freedom of Information Act (FOIA) to <b>Electronic Mail Messages</b> (E-mail)
CA IB 98-071	Revised Procedures for <b>Processing FOIA Requests</b>
CA IM 97-044	FOIA Policy and Procedures/ <b>Delegation of Authority</b>
Special Guidance	Checklist for Preparing a FOIA Response

## NATIONAL TRAINING CENTER

BLM Video	"To Serve the Public"
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## MEMORANDUM

Wednesday, February 10, 1999 1:22 pm

To: BLM - FOIA/RA

From: Marilyn Legnini

Subject: **Agency Records Under the FOIA**

The Department FOIA Appeals Officer is concerned about a recent FOIA-Appeal made because a BLM office erroneously denied a request for an electronic message because the office did not consider the electronic form of the message an "official agency record". The BLM office cited in its response to the FOIA requester the 36 CFR 1222.12 and 44 USC 3301 (not the FOIA statute or regs).

Please remember that the definition of "record" that is subject to a FOIA request is different than that defined in the Federal Records Act.

The definition of "record" under the new FOIA is revised to include information in electronic formats (see 5 USC 552(f)(2) & Attachment 2-5 of BLM IM 97-46). This is to say that information maintained in electronic format is subject to the FOIA, and searches must be made through any electronic files which contain information responsive to the FOIA request. Any item containing information that is in the possession and control of an agency is usually considered to be an agency record under the FOIA. However, for purposes of the FOIA, "records" do not include: (A) Library and museum material acquired or received and preserved solely for reference or exhibition purposes; (B) stocks of publications and of processed documents; and (C) computer software which is obtained by an agency under a licensing agreement prohibiting its replications or distributions.

Also see pages 23 and 36 of the 1998 Dept. of Justice FOIA overview.

Please make sure the offices under your oversight are familiar with what records the FOIA covers.

Thanks

CC: INTERIOR-CCM.~IOS#MAIN. Alexandra, INTERIOR

## **FOIA EXEMPTIONS\***

**NOTE: “Only that portion of the record that applies to the exemption may be withheld.”**

Exemption 1 - Classified Secret Matters of National Defense or Foreign Policy.

Exemption 2 - Internal Personnel Rules and Practices of an Agency.

Exemption 3 - Matters Specifically Exempted From Disclosure by Statute.

Exemption 4 - Trade Secrets and Confidential Business Information.

Exemption 5 - Internal Memoranda

Exemption 6- Personal Privacy

Exemption 7 - Investigatory Files

- 7(A) Law Enforcement Proceedings
- 7(B) Law Enforcement/Right to a Fair Trial
- 7(C) Law Enforcement/Personal Privacy
- 7(D) Law Enforcement/Confidential Sources
- 7(E) Law Enforcement Investigations
- 7(F) Law Enforcement/Physical Safety

Exemption 8 - Records of Financial Institutions.

Exemption 9 - Geological and Geophysical Information

\* Each of the nine FOIA exemptions are described in detail in BLM Manual 1278.32.

## **FOIA EXEMPTION CHECK LIST**

Page 1 of 2

The following analysis may help the BLM employee in identifying which exemption applies to records requested within the non-public files.

- ▶ **ATTORNEY-CLIENT PRIVILEGED (Exemption 5):** Was the information provided to the Department's attorney with the intent that it would be held confidential? Has the information been kept confidential within the Bureau?
- ▶ **ATTORNEY WORK-PRODUCT (Exemption 5):** Was the information prepared by or on behalf of the Department in anticipation of future litigation?
- ▶ **COMMERCIAL INFORMATION (Exemption 4):** Does the information relate to business or trade in which the submitter has a commercial interest?
- ▶ **FINANCIAL INFORMATION (Exemption 4):** Is this information taken directly from the company's ledger? Is this a final audit summary or auditor's working papers?
- ▶ **CONFIDENTIAL INFORMATION (Exemption 4):** Will release of the information cause harm to the competitive position of the company from whom the information was obtained, or impair the Government's ability to obtain similar information in the future? (Under the FOIA and Executive Order 12600, the company must be notified and allowed to review any confidential commercial information which may be released by the Bureau).
- ▶ **PERSONAL INFORMATION (Exemption 6 or 7):** Would release of the information be an unwarranted invasion of personal privacy? For example, is there a social security number, credit card number, home address, phone number, complaint against an employee, age, and medical history, etc.
- ▶ **PHONE CONVERSATION RECORDS:** Only information that is otherwise eligible to be withheld under a FOIA exemption may be withheld; e.g. identifiers of confidential complainants, privileged attorney-client communications, etc. Phone conversation records are not per se withholdable, if they have been circulated within the Bureau, filed in Bureau files, or otherwise used for official purposes.
- ▶ **PRE-DECISIONAL DOCUMENT (Exemption 5):** (1) Has this document ever been released outside the Bureau to a non-Federal Government entity? If it has, in most cases, it should be released. (2) Is this document or section of document a final policy, or an opinion or recommendation? If the later, then Exemption 5 applies. (3) If this document is not signed or dated, is it a final or draft document? If a draft, then Exemption 5 applies.
- ▶ **PUBLIC FILES:** If a document has been stored in files routinely and readily available to the public, such as reading-room files, in most cases the document should be released, unless they are confidential files marked and placed in the public file. BLM should review public files for any confidential material which may have been inadvertently placed within the file.

## **FOIA EXEMPTION CHECK LIST**

Page 2 of 2

- ▶ **PERSONAL FILES VS AGENCY FILES:** Notes created solely for the convenience of the writer that are not required to be made by the writer as an official duty, and are not (1) shared with anyone, (2) kept in Bureau files, or (3) used in an adverse action against the employee are not considered Bureau records under the FOIA and are not subject to a FOIA request.
- ▶ **OTHER STATUTES (Exemption 3):** Is this information protected by another statute? The Indian Minerals Development Act, Federal Coal Leasing Amendments, Archaeological Resources Protection Act of 1979, and the National Historic Preservation Act Amendments, for example.

## HARM STATEMENT

“...the Bureau may apply the FOIA exemptions to withhold information only when the agency reasonably foresees that disclosure would be harmful to the interest protected by the exemption.”

A “Harm Statement” identifies what harm would result if the information were released.\*

The Department requires its agencies to develop a “Harm Statement” to be used for each document, or portion of a document, withheld at BLM’s discretion under a FOIA exemption. It provides necessary information to the Solicitor’s office in the event of litigation.

When applying Exemption 5, a “discretionary” exemption, Government employees are required to identify what specific harm to Government operations or personal privacy will occur if there is a release of information.

\*Refer to Draft BLM FOIA Handbook, Chapter 3, Illustration 1, Page 1, for sample statements.



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240  
June 26, 1996

In Reply Refer To:  
1278(520)  
Affects BLM 1278.3  
IM No. 94-241

EMS TRANSMISSION 6/27/96  
Instruction Memorandum No. 96-136  
Expires: 9/30/97

To: AD's, SD's, D-OF&A, RS-100, HR-200, BC-600, D-NTC  
**Attn::** Records Administrators, FOIA Coordinators, and Privacy Act Coordinators

From: Director

Subject: **Revision of Instructions for Sound Grounds Determination When Applying Freedom of Information Act Exemptions**

This memorandum revises previous guidance provided July 21, 1994, in Instruction Memorandum (IM) No. 94-241 to implement the Department of Justice's (DOJ's) requirements when applying Freedom of Information Act (FOIA) exemptions. The Attorney General's memorandum stated that: "It shall be the policy of the DOJ to defend the assertion of a FOIA exemption only in those cases where the agency **reasonably foresees that disclosure would be harmful to the interest protected by the exemption.** Government agencies were instructed that they may no longer withhold information merely because it meets the legal requirements for withholding pursuant to that exemption.

The major change being made which was provided in the IM above is that the Bureau is now instructed **not** to provide the FOIA requester with the language from the documentation prepared identifying the harm if the information were to be released. However, the exemption being applied must be identified.

The following instructions will continue to be required:

1) The Bureau is encouraged to continue its careful review of records when applying FOIA Exemptions. For all exemptions, sound grounds must exist to withhold information. This involves ensuring that the information in question actually meets the legal definition of the exemption being considered. Refer to DOJ guidance in the annual FOIA Guide, and the Bureau of Land Management (BLM) Manual Section 1278.3, which explains when exemptions apply;

2) For exemptions identified in Attachment #1, continue to prepare documentation explaining the substantial harm that release of the documents could reasonably be presumed to cause. This documentation will serve as a justification for the determination of the existence of sound grounds in the event a FOIA appeal is filed by the requester, and it will be provided to the attorney handling the FOIA appeal;

3) The documentation identifying harm must be coordinated with the office's designated FOIA attorney. Offices will continue to apply guidance in 43 CFR 2.16(a)(4), which requires consultation with the FOIA attorney when: (a) There is a decision to withhold a requested record; (b) to release a record that is exempt from disclosure, or (c) to deny a fee waiver, and

4) The FOIA requester must also be informed when information meets the legal requirements of an exemption, and it is being released by the agency because no foreseeable harm applies.

If you have any questions concerning the content of the memorandum, please contact Marilyn Legnini, Bureau FOIA and Privacy Act Officer at (202) 452-5013.

Signed  
Gloria Inness  
Acting Assistant Director  
Human Resources Management

Authenticated  
Robert M. Williams  
Directives Team, W0530

1 Attachment

1 - List of FOIA Exemptions (2 pp)

A. The following are FOIA exemptions which **DO NOT** specifically prohibit disclosure, and for which documentation must be prepared. The documentation will identify why a FOIA exemption is being applied, and why the agency reasonably foresees that disclosure would harm an interest protected by the exemption, and a Bureau program.

<b>Exemption 2 ("Low 2"):</b>	"Records related to the internal personnel rules and practices of an agency ....which are of a relatively trivial nature".
<b>Exemption 5:</b>	"Inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency".
The three primary privileges incorporated into Exemption 5 are: (a) The deliberative process privilege; (b) the attorney work-product privilege; and (c) the attorney-client privilege.	
<b>Exemption 6:</b>	<b>(To the extent the information is not protected by the Privacy Act).</b> "Personnel and medical files and similar files".
<b>Exemption 7(C):</b>	<b>(To the extent the information is not protected by the Privacy Act).</b> "Law enforcement information..the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy".
<b>Exemption 7(D):</b>	<b>(To the extent the information consists of non-identifying information provided by a source).</b> "Records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source..."
<b>Exemption 7(E):</b>	"Protection to all law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law".
<b>Exemption 8:</b>	"Matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions"..
<b>Exemption 9:</b>	"Geological and geophysical information and data, including maps, concerning wells".

WO IM 96-136  
Attachment 1-2

B. The following exemptions specifically prohibit disclosure and no documentation is required:

<b>Exemption 1:</b>	National Security information.
<b>Exemption 2 (High 2"):</b>	"Records related to the internal personnel rules and practices of an agency.. more internal matters, the disclosure of which would risk circumvention of a legal requirement".
<b>Exemption 3:</b>	"Information specifically exempted from disclosure by statute". For example: the Archaeological Resources Protection Act of 1979).
<b>Exemption 4:</b>	"Trade secrets and commercial or financial information, obtained from a person, that is privileged or confidential".
<b>Exemption 7(A):</b>	"Records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information...could reasonably be expected to interfere with enforcement proceedings".
<b>Exemption 7(B):</b>	"Records or information compiled for law enforcement purposes the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication".
<b>Exemption 6:</b>	<b>(To the extent that the documents are covered by the Privacy Act). See above.</b>
<b>Exemption 7(C):</b>	<b>(To the extent that the documents are covered by the Privacy Act). See above.</b>
<b>Exemption 7(D):</b>	<b>(For all information other than information that consists of non-identifying information provided by a source).</b>

WO IM 94-241  
July 21, 1994

### **Sound Grounds Determination for Withholding Bureau Information**

**Under the Freedom of Information Act Exemptions**  
(The following attachments have been incorporated for your reference)

Attachment 2

**Statement of Harm**

**Documentation for "Sound Grounds" in Withholding is Required for Each Document (or Portion of Document) Being Withheld for Discretionary FOIA Exemptions. Attach Statements to the Affidavit (See attachment 3).**

Document Number	Date	<u>Identification of Subject, Exemption Cited, and Harm if Released</u>
1	4/16/92	Letter from the District Office to the State Director seeking guidance for oil shale mining. Exempt under FOIA Exemption 5 as pre decisional. A final decision has not been made, and release of the information may inhibit frank discussions on matters of policy between subordinates and superiors
2	5/6/92	Record of phone conversation between the Washington Office and the State Director providing advice on mining policy. Exempt under FOIA Exemption 5 as pre-decisional. Release of this information would harm the quality of agency policy since a final decision on policy has not been made.
3		Law enforcement manuals requested are being withheld under "high" Exemption 2, which concern substantial internal matters, the disclosure of which would risk circumvention of a legal requirement. Release of this information would risk the circumvention of agency regulations or statutes.

WO IM 94-241  
Attachment 3

**Affidavit**  
**(One Should Be Completed For Each FOIA Request)**

The attached harm statements identify the document(s) (or withholdable portions of documents) being withheld. It is determined that sound grounds exist for withholding the document(s) as identified, and under the exemption(s) indicated. The Solicitor's Office was consulted concerning withholding of this information. The following identifies the attorney consulted:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Phone #: \_\_\_\_\_

( ) I have determined that disclosure of all documents being released would not be harmful to an interest protected by that exemption.

( ) I have determined in consultation with our FOIA attorney, that sound grounds exist for withholding the document(s) pursuant to the exemption(s) indicated. Attached is a written statement detailing the reasonably foreseeable consequences of disclosure of the document(s).

\_\_\_\_\_  
(Name)  
Headquarters or State FOIA Officer or Coordinator

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Bureau)

## **REVIEW FOR FOIA EXEMPTION 5**

### **I. Legal Definition of Exemption 5:**

Exemption 5 exempts from disclosure: "...inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency". These privileges include: (a) Attorney-client privilege; (b) attorney-work product privilege, and (c) deliberative process.

### **II. Exemption 5 Determination:**

The following is to assist in making a determination for whether information fits the legal definition for withholding under Exemption 5. Responses should be "yes" to the following to fulfill the legal definition of the exemption:

- A. Was this document produced by the Federal Government?
- B. If no, was it produced by an outside source in the capacity of a consultant?
- C. Was it shared only within the Executive Branch?
- D. Is the requester currently in litigation with the Bureau?

To continue with Exemption 5 analysis, the document or information must be produced by the Executive Branch (or by a consultant), and not officially released outside the Executive Branch.

### **III. To determine if the deliberative privilege will apply, responses should be "yes" to the following:**

- A. Is the information pre-decisional (or antecedent to the formal or informal adoption of an agency policy)?
- B. Did the information play a key role in the course of the Bureau's decision making process?
- C. Is the information deliberative (direct part of the deliberative process, i.e., makes recommendations or opinions on legal or policy matters)?
- D. Was the preparer of the document the decision maker for the established policy?

E. Does the document contain statements of policy and final opinions that have the force of law, that implement an established BLM or Departmental policy, or that explain actions that an agency has already taken?  
- If so, does any portion of the document discuss pre-decisional recommendations that were not expressly adopted? Mark those passages discussing unadopted, pre-decisional recommendations.

- F. Does the document reflect the decision making process?
- G. Will release affect the integrity of the deliberative process?
- H. Will release reveal the status of the decision making process?

I. Does this information concern opinions and recommendations (vs. factual information)?

J. If the record contains factual material, mark below the type(s) of factual material included:

- Were the facts selected from a larger group of facts? i.e., were the facts distilled from many source materials?
- Are the facts so inextricable intertwined with the opinions, recommendation and other deliberative material in the record that release would reveal the agency's deliberations?
- Do the facts reflect a point of view? i.e., are the facts organized thematically or are they merely a chronological recitation of an event such as a meeting?
- Are the facts scientific and do they reflect an interpretation of technical data?

Balanced with the other questions, the information checked may be protected under the deliberative process privilege.

K. Is this a non-factual portion of a briefing paper?

L. Is this a non-factual portion of a draft?

#### **IV. Attorney Work-Product Privilege Under Exemption 5:**

Protects documents and other memoranda prepared by an attorney in contemplation of litigation.

A. Does this information fall under this category?

B. Is there a specific articulable claim that is likely to lead to litigation?

#### **V. Attorney-Client Privilege Under Exemption 5:**

Protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. This is not limited to the context of litigation.

A. Does this information fall under this category?

#### **VI. Harm Considerations for Exemption 5:**

Regardless of whether Exemption 5 can be legally cited to withhold this document, a foreseeable "harm(s)" must be identified before the document can be withheld. The following questions may help to identify this harm.

A. Will release of this document harm the quality of agency decisions? If so, explain how this may happen?

B. Will open, frank discussions on matters of policy between subordinates and superiors be inhibited? If so, explain how this may happen?

C. Will release allow for premature disclosure of proposed policies before they are finally adopted? If so, explain how this may happen?

D. Will release cause public confusion that might result from disclosure of reasons and rationales that were not in fact the grounds for an agency's action? If so, explain how this may happen?

WO IM 94-241  
Attachment 5

**Sample Letter**

ADDRESS



Dear -(Name).

This is in response to your Freedom of Information Act (FOIA) request of (date) addressed to (name). This office received your request on (date). You requested information concerning the bypass of the Federal ban on predator control on Bureau of Land Management (BLM) lands.

Enclosed are documents in response to your request. The memorandum from the State Director to the District Office dated November 12, 1993, is being released. Even though the information falls under the legal description of FOIA Exemption 5 as pre-decisional information, sound grounds did not exist for withholding this information.

The following documents are being withheld for the reasons cited. Items being withheld under FOIA Exemption (b)(5) include statements of what harm the release of documents may cause:

(1) BLM Issue Paper dated October 22, 1993, prepared by the State Director is considered deliberative and withheld under FOIA Exemption 5. The potential harm would be in BLM revealing a legal position for which BLM has not committed itself to at this time.

(2) The Office of the Solicitor memorandum to the BLM dated December 3, 1993, is considered pre-decisional and attorney-client privileged under FOIA exemption 5. The potential harm would be in BLM disclosing a settlement position.

The person responsible for this partial denial is [(name) and/or] the undersigned. Under 43 CFR section 2.18, you have the right to appeal this partial denial of your FOIA request by writing to:

Freedom of Information Act Appeals Officer  
Office of Information Resources Management  
U.S. Department of the Interior  
1849 C. Street, N.W., MS 5312 MIB  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date that you receive this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "Freedom of Information Act Appeal" both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this partial denial is in error.

If you have any questions, please contact (name) at (phone number)

Sincerely,

(Name)  
Freedom of Information  
Act Officer

Enclosures

**CHECKLIST FOR PREPARING A FOIA RESPONSE**

Checklist is from the following document:

H-1278-1 - FREEDOM OF INFORMATION ACT HANDBOOK  
Chapter 4 - Processing Initial Freedom of Information Act Requests  
Illustration 1, Page 1

**1. Was the request made in writing, and did it cite the Act?**

Technically it would not be considered a FOIA request. However, even though the Act is not cited, it may be treated as a FOIA if the records requested are considered non-public because a FOIA exemption may apply.

**2. Did the request reasonably describe the records requested?**

If not, the requester should be contacted to clarify what documents he specifically wants.

**3. Did the request specify the fee category and identify how much they are willing to pay?**

If the fee category (43 CFR 2.20) is not obvious, and the maximum amount the requester will pay in fees is not provided, contact the requester for this information.

**4. Is there a need to clarify whether a fee waiver is justified?**

If so, the requester should state in writing how he qualifies for a fee waiver in connection with the particular request. Refer to (43 CFR 2.21(a)) for conditions for justification of a fee waiver.

**5. Does the FOIA requester desire a record that is not in existence at the date of the request?**

A Federal agency is not required by the FOIA to do research for a requester, to compile or analyze data, or to answer questions. Minor reprogramming of computer programs may be advisable, when the reprogramming is not burdensome or extremely costly to the Bureau.

An agency has the right to choose the format of disclosure where the choice is reasonable under the circumstances. Department regulations provide that where the agency determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the agency may, in its discretion, agree to creation of a new record as an alternate to disclosing existing records.

## FEE WAIVERS

### References:

BLM Manual 1278.36  
43 CFR 2.21(a)  
383 DM 15, Section 4.10

**Generally:** “Documents shall be furnished without charge or at a reduced fee if disclosure is in the public interest.”

### Waiver of Fees

1. Does the record concern government operations or activities?
  - If so, is disclosure likely to contribute to public understanding not previously existing.
  - Disclosure must contribute to the understanding of the public at large as opposed to the individual requestor.

#### *Clarification:*

- (a) Is the information new?
- (b) Does disclosure support public oversight of government operations including quality of government activities and the effect of policy and regulations on public health and safety?
- (c) Does disclosure clarify data on past or present government operations?

*Example:* Administrative staff manuals and instructions to staff that affect a member of the public.

2. Does the requester have a commercial, trade or profit interest that would be furthered by disclosure?  
If the answer is “yes”, the fee waiver should be denied.

### Reduction of Fees

- If a reasonable sampling of a voluminous amount of repetitive records would contribute to public understanding.
- If some documents warrant a fee waiver and others do not.

### Denial of a Waiver

If a fee waiver or reduction of fees is denied, the requester must be notified in writing.

The denial letter must include:

- Basis for denial
- Name and position title of person responsible for denial (BLM State Director)
- Statement that denial may be appealed. (reference 43 CFR 2.18)

### Discretionary Waivers

Refer to Appendix 3 in this document.

(Departmental Manual 383 DM 15, Chapter 4, Section 4.13)

### Sample Fee Waiver Letters

(383 DM 15, Chapter 4, Illustrations)

## FOIA APPEALS

### Right of Appeal

A requester may appeal to the Department:

FOIA Appeals Officer  
Office of Information Resources Management  
U.S. Department of the Interior  
1849 C Street N.W., MS 5312 MIB  
Washington, D.C. 20240

### Valid Reason for Appeal

- 1 - Records have been denied
- 2 - Request has been denied
  - Failure to describe the records requested
  - Records cannot be located
  - Procedural deficiency
- 3 - Fee waiver denied
- 4 - Request not decided within designated time limit

### Time Limit for Appeal

- 20 working days from date of initial denial or partial denial

### Form of Appeal

- Must be in writing  
(Requester may reference 43 CFR 2.18 for documents required for submission of appeal.)

### Sample Language for Notification of Right to Appeal

Refer to Appendix 2, this document.  
(Draft FOIA Handbook Samples 17-20 and 22.)

## **REQUESTS REFERRED TO OTHER AGENCIES OR FACILITIES**

**If your office receives a request for records in its possession that originated with another agency or facility, you must refer the requester to the originating agency or facility.**

- 1 - Inform the requester in writing that you are forwarding the request to another agency.  
(See Illustration 5, 383 DM 15, Chapter 3)
- 2 - Forward the request to the action agency.  
(See Illustration 6, 383 DM 15, Chapter 3)

**If a request is referred to another office in the same Bureau (e.g. State Office to a Field Office):**

- 1 - The requester is to be advised in writing of the referral.
  - Include mailing address of responsible office.
  - Include name and telephone number of a contact.(See Illustration 8, 383 DM 15, Chapter 3)
- 2 - The office receiving the initial request must send copies of the original request and referral letter to the appropriate office providing response.  
(See Illustration 7, 383 DM 15, Chapter 3)

## REPORTING REQUIREMENTS

- ▶ Maintain data on the number of FOIA requests received, the number of denials, fees collected, and the cost, in dollar amount, to process the request.
- ▶ Field Office Coordinators report data to the State Records Administrator/FOIA Coordinator each January.
- ▶ State FOIA Coordinator consolidates State Office and Field Office submissions and reports to the Director in Washington.

**Note:** If you have maintained a FOIA log with information pertaining to all requests, this reporting process should not be a difficult task.

## **FOIA MANAGEMENT GUIDELINES FOR FIELD OFFICES**

Page 1 of 3

1. **Each Field Office should identify a primary and back-up FOIA Coordinator.**
2. **Post names of primary and back-up FOIA Coordinator in the mail room for the Mail Clerk and his/her back-up.**
3. **Due Dates**
  - Simple FOIA requests are due within 10 working days.
  - Complex requests are to receive response within 20 working days.

**Note:** By law, BLM has 20 working days to respond and can request a 10-day extension.

4. **Mail Clerk**
  - Date stamp FOIA requests and deliver them to the FOIA Coordinator.
  - If the FOIA Coordinator is away, give the request to the back-up FOIA Coordinator.
5. **FOIA Coordinator and his/her Back-up**
  - Maintain a single FOIA log
    - Record the date and time a FOIA is received, the nature of the request, the name of the Branch Chief/Acting the request is assigned to, and a due date.
    - Monitor the log throughout the process.
    - Completed log should include:
      - date response was mailed
      - staff time devoted to response
      - applicable charges billed to the requester
      - recording of payment when received.
  - Make two copies of the request.
    - One copy to the Field Office Manager
    - One copy to the Branch Chief the Field Office Manager assigns to process the request.
    - **FOIA Coordinator keeps the original.**
  - Follow up with staff member and/or Branch Chief to ensure requests are responded to within established legal time frames.
  - Submit a courtesy copy of each FOIA request received and BLM's response to the State FOIA Coordinator (CA 941).
  - Completed FOIA request file copies are to be maintained in a locked cabinet or drawer until the appropriate hold time under the current records disposition schedule has expired.

6. **Unusually Lengthy or Unreasonable Requests**

The FOIA Coordinator or staff specialist assigned the request should call the requester to find out exactly what documents he/she actually wants and if the requester will agree to modify their request. If the requester's phone number is unknown, a letter should be prepared for the Field Office Manager's signature that explains BLM's concerns for filling the request and the possible costs involved.

## FOIA MANAGEMENT GUIDELINES FOR FIELD OFFICES

Page 2 of 3

If the requester agrees to modify their FOIA request, ask that the modification be submitted in writing. Alternatively, the FOIA requester can prepare a letter confirming the request was verbally modified. Document the conversation with a Phone Confirmation Record and reference the conversation or the letter in the final response.

### 7. Cost Recovery

- Commercial requesters pay all costs for search, review, and duplication
- "Other Requesters" category entitles those FOIA requesters to 100 pages of xeroxing and 2 hours of search/review time for free.
  - Obtain written assurance that such requesters will pay additional costs before they are incurred.
  - Require advance payment and payment of delinquent fees for requesters with unpaid balances.

### 8. Fee Waivers

Fee waivers can be granted to requesters who demonstrate that release will significantly benefit public understanding of government activities.

### 9. Fee Waiver Denials

Fee waiver denials must be reviewed by the Solicitor and signed by the State Director. Prepare a draft fee waiver denial letter and forward it (including E-mailing the draft response) along with a copy of the request to the State FOIA Coordinator (CA 941).

**Note: CDD Field Offices are to send all documentation to the CDD FOIA Coordinator (CA-060.33) for review and surnaming by the District Manager.**

### 10. Signing Authority

- The field office manager/acting signs responses if no records have been denied.
- Only the State Director has the authority to sign a FOIA response withholding/denying records.

## **PROCEDURES FOR A FOIA DENIAL:**

### **Field Office FOIA Coordinator**

- Copy all responsive documents.
- Segregate records that are exempt under the FOIA and should be withheld.
- For documents that can be partially released, include both an unredacted and a partially redacted copy.
- Prepare a draft response with an explanation for withholding records.
  - Cite the specific FOIA exemption(s) involved
- Forward the package, including E-mailing the draft response, to the State FOIA Coordinator (CA 941).

**Note: CDD Field Offices are to forward the package first to the CDD FOIA Coordinator.**

### **CDD FOIA Coordinator**

- Review the file.
- Finalize the draft for the DM's initials
- Forward the package to the State FOIA Coordinator (CA-941).

## FOIA MANAGEMENT GUIDELINES FOR FIELD OFFICES

Page 3 of 3



**State FOIA Coordinator**

- Prepares a final response for the Solicitor's review and the State Director's signature, with a copy of the response to the Field Office FOIA Coordinator.

**Solicitor's Office**

- Examines all documents being withheld.
- A complete copy of the file is required for the solicitor to be assured the denial would be defensible in a court of law.

**Field Office FOIA Coordinator**

- Update the log
- File document in FOIA file in a locked cabinet or drawer.

## **INTRODUCTION TO THE PRIVACY ACT**

“As a government employee you may have to work with or handle records or information about individuals. Generally, such records will require special handling and safeguarding because they are subject to the requirement of the Privacy Act. The Privacy Act establishes special requirements for collecting, creating, maintaining, and distributing records that can be retrieved by the name of an individual or other identifier (whether in paper or electronic form). These are called Privacy Act Systems of Records.”

“The subject of a Privacy Act System of Records can ask to see, correct, and appeal the information in that record. These disclosure restrictions are subject to civil and criminal penalties. For more information, see 3 CFR 2.56 or contact your Freedom of Information Act (FOIA)/Privacy Act Coordinator.”

## PRIVACY ACT REQUESTS

Written requests for employee records, other than those noted below, are to be processed as a FOIA request. Such requests are to be forwarded to the District or State FOIA Officer, as you are so directed.

Telephone requests may include:

- Credit or loan companies verifying salary
- Requests for employment verification
- Public requests for information about employees

The following items from current or former employee records are public information:

- name
- duty station
- position title
- grade
- gross annual salary (do not provide net salary information)
- civil service status (career, career conditional)
- tenure of employment (permanent, temporary or part time)
- length of service in BLM and the government

Requests for information pertaining to employees should be forwarded to the individual or staff who has access to personnel records (supervisors, District or State Office Branch of Human Resources).

UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
Washington, D.C. 20240

March 1, 1996

IRM BULLETIN NO. 1996-004

To: Bureau and Office Freedom of Information Act (FOIA) Officers

From: Gayle F. Gordon, Acting Director  
Office of Information Resources Management (PIR)

Subject: **Processing FOIA Requests for Personal and Personnel-Related Information**

During the past few months, several questions have been raised concerning the release ability of various types of personal and personnel-related information. From our discussions, it appears that disclosure of this information sometimes varies from bureau to bureau. To ensure that requests for this type of information are processed consistently throughout the Department, the following policy guidelines are provided. It should be noted, however, that the examples cited below are intended as general guidelines only. Documents should be reviewed on a case-by-case basis as the information at issue and the individual circumstances will affect the Department's release determination.

This directive supersedes the October 4, 1991, memorandum on processing FOIA requests for SF-171 information, issued by the Departmental FOIA Officer, as well as any other guidance concerning personal/personnel-related information, including the Department of the Interior (DOI) FOIA Handbook (383 DM 15). The FOIA Handbook will be revised to incorporate the guidance contained in this memorandum.

Exemption (6) of the FOIA is usually invoked to withhold information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of an individual's personal privacy. Pursuant to the guidance of the courts, the Department maintains that an individual has a personal privacy interest in the information listed under B, below. Accordingly, this information is eligible for protection under exemption (6) if:

- (1) There is no public interest qualifying under the standard set forth in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) and *Department of Defense v. Federal Labor Relations Authority*, 62 U.S.L.W. 4143 (U.S. February 23, 1994) (in order to qualify as a public interest, release of the information itself would have to shed light on the agency's performance of its statutory duties); or
- (2) There is a public interest under exemption (6), but the public interest in disclosure does not outweigh the potential harm to an individual's personal privacy when the required balancing test is performed (see the FOIA Handbook, Chapter 5.4F(3)). However, exemption (6) may not be used where the privacy interest to be protected is the requester's. Therefore, this exemption should not be used to withhold information from a requester that he/she would be entitled to under the Privacy Act (information about himself or herself). For additional guidance, see the FOIA Handbook, Chapter 5.4F).

Specific examples are provided below:

**A. Personal/personnel-related information *generally releasable* under the FOIA (see 5 CFR § 293.311 and 383 DM 15, Chapter 3.22).**

- (1) Names of present and former employees.
- (2) Present and past position titles and occupational series.
- (3) Present and past grades.
- (4) Present and past annual salary rates--including amounts received for performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials (normally, the name of the individual, position, type of award (performance, incentive, meritorious or distinguished service) and the dollar amount are releasable).
- (5) Other awards and honors received in an individual's professional capacity, including justification for all awards and honors except for information protected under exemption 6.
- (6) Membership in organizations related to employee's profession (see B(26)).
- (7) Present and past duty stations (this includes official mailing and E-mail addresses of DOI employees); as well as official telephone numbers as they appear in the DOI Telephone Directory.
- (8) Position descriptions, identification of job elements and those performance standards (but not actual performance appraisals), the release of which would not interfere with law enforcement programs or inhibit agency effectiveness. Performance elements and standards may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.
- (9) Educational background--high school, college/graduate school; technical education related to the employee's (or successful applicant's) profession and/or position (see B(1), below).
- (10) Special skills, accomplishments, and awards related to the employee's (or successful applicant's) profession and/or position.
- (11) Past Federal/State/local government employment and salary including reason for leaving except when protected under exemption (6) (see B(1), below).
- (12) All other prior employment related to position held including reason for leaving except when protected under exemption (6) (redact salary, name and telephone number of supervisor) (see B(1), below).
- (13) Type of job applying for.

**A. Personal/personnel-related information *generally releasable* under the FOIA  
(see 5 CFR § 293.311 and 383 DM 15, Chapter 3.22). (Cont'd)**

(14) Sex.

(15) Citizenship.

(16) Information pertaining to military service and veteran preference, e.g., fact that an individual served, military service number, dates and branch for all active military service, rank, medals, badges or awards received, fact of veteran preference (see B(27) and (28), below).

(17) Fact of recommendation for promotion, reassignment, appointment, etc., after action occurs except for information protected under exemption 6.

(18) Letters of appreciation and commendation from professional associates.

(19) Standard payroll forms (sanitized of any personal information).

(20) SF 171, Application for Federal Employment, and other job application forms for the successful candidate or the incumbent (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a) and B(12), below, regarding the SF-171's of unsuccessful applicants).

(21) SF 50, Notification of Personnel Action (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).

(22) SF 52, Request for Personnel Action (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).

(23) Verification of Indian Preference for Employment (Form S-4432) and Certificate of Indian Blood for successful applicant or incumbent (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).

(24) Factors used in ranking job applicants (not to be confused with a crediting plan cited under C(1), below).

(25) Name of the selecting official.

(26) Panel ratings and scores of the successful job candidate (names of raters should be protected) (see C(4), below).

(27) Members of the bargaining unit--names of all members (see B(7), below).

(28) Names of Federal employees involved in union activities during working hours.

(29) Number of hours worked, including overtime, and total number of hours of leave taken (see B(11), below).

(30) Names of individuals who applied for and received the buyout and have separated from the agency (see B(8), below).

(31) Service computation date and information related to tenure.

(32) Information about deceased persons unless exemption 6 is applicable (see the FOIA Handbook, Chapter 5.4F(5)).

(33) Names of FOIA requesters except when they are making first party requests (see B(30))\*.

-----  
\*The names of FOIA requesters are releasable as they do not ordinarily expect that their names will be kept private; therefore, release would not cause even a minimal invasion of their personal privacy. Personal information about the requesters, however, such as home addresses and telephone numbers should not be disclosed.

**B. Personal/personnel-related information *generally withheld* under exemption 6 of the FOIA (see 383 DM 5.4F(7))**

(1) Personal identifying information such as:

- home address and telephone number;
- social security number;
- age, place and date of birth;
- other names used;
- marital status;
- race and/or ethnic background;
- an individual's party or union affiliation;
- technical education--not related to the position held (see A(9), above);
- work experience--not related to the professional qualifications for the position held (see A(11) and (12), above);
- whether an employer may be contacted regarding an individual's work record;
- availability for employment;
- details of health and insurance benefits;
- allegations of misconduct or arrests;
- information concerning or provided by relatives and references;
- other background information which is not work related; and
- tribal affiliation, degree of Indian blood ("quantum"), lineal heritage/history.

**B. Personal/personnel-related information *generally withheld* under exemption 6 of the FOIA (see 383 DM 5.4F(7))** (Continued)

- (2) Payroll information--number of deductions and the amounts, fringe benefit payments, number of withholding exemptions and net wages.
- (3) Financial information such as an individual's credit rating, personal credit card numbers, business credit card numbers, credit card statements.
- (4) Personal cellular telephone and beeper numbers of private individuals; official cellular telephone and beeper numbers of security/special contact personnel (exemptions "high" (2) and (7), also possible).
- (5) PIN (personal identification number).
- (6) Names of dues paying members of the bargaining unit (see A(27), above).
- (7) Names of individuals who applied for the buyout, but did not receive it (see A(30), above).
- (8) Performance appraisals including any narrative material.
- (9) Supervisory notes on an employee's performance.
- (10) Time and attendance records (the amount of sick or annual leave, leave without pay (LWOP), absent without leave (AWOL) and other personal information--see the FOIA Handbook, Chapter 5.4F(7)(a) and A(29), above).
- (11) SF-171s of unsuccessful applicants for employment including their identities, qualifications, and any narrative material (see A(20), above).
- (12) The knowledge, skills, abilities and personal characteristics of unsuccessful applicants.
- (13) Supervisory evaluation of a candidate for a particular position and assessment of professional conduct, ability, etc.
- (14) Referral lists of qualified candidates and the roster of applicants for a particular position, except for the successful candidate.
- (15) Reasons for job termination.
- (16) Employee grievance and response to grievance.
- (17) Records regarding the outcome of an investigation of employee conduct (where wrongdoing by high-level Government official is shown, the result may be different).
- (18) Letters of reprimand and suspension notices.
- (19) EEO investigative case file (see ASB No. 95-9, dated September 28, 1995--exemptions (7C), (7A), and (5), also may apply).



**B. Personal/personnel-related information generally withheld under exemption 6 of the FOIA (see 383 DM 5.4F(7))** (Continued)

- (20) Results of a complaint by an employee against his/her supervisor (where wrongdoing is shown, the result may be different).
- (21) Arbitration decision on an employee grievance (where a particular employee's decision is requested).
- (22) Employee's resignation letter.
- (23) Mailing lists that contain personal information (names, home addresses, and telephone numbers of individuals as opposed to businesses and other organizations) where the release would not shed light on the operations or activities of the Government (see the Reporter's Committee decision).
- (24) Records concerning an employee's medical condition, history, and health test results.
- (25) Membership in organizations other than those related to employee's profession (see A(6), above).
- (26) Information pertaining to eligibility for 5- or 10-point veteran's preference.
- (27) Information pertaining to whether an individual received an honorable or dishonorable discharge from military service.
- (28) Tribal census and membership rolls.
- (29) Names and home addresses of Privacy Act requesters and home addresses of FOIA requesters see A(33), above).

**C. In addition to information generally withheld pursuant to exemption (6), the following related information is also normally withheld under the FOIA:**

- (1) Crediting plans used in determining the qualifications of a candidate for employment, advancement or promotion (exemption "high" (2));
- (2) Criteria for interviewing prospective employees (exemption "high" (2));
- (3) Examination questions and answers (exemption "high" (2)); and
- (4) Ratings given to job applicants by panel members and the names of the panel members (ratings may be released if doing so will not reveal the identities of the panel members; the identities of the panel members may be released if doing so will not reveal the ratings they gave)--exemptions (5) and
- (5) may be used to protect this information (see A(26), above).

Please ensure that all employees are advised of the guidance contained in this memorandum. This will ensure that uniform responses are provided and protect the Department's position in the event of litigation. It also will ensure that the privacy of the subject individual(s) is protected.

If you still have questions concerning the releaseability of any information, please consult the designated FOIA attorney for your bureau/office. When he/she is not available, please contact Ms. Alexandra Mallus at (202) 208-5342, by fax at (202) 208-5048, by E-mail--Mallus, Alexandra (use~Interior-CCM), or by Internet--href="mailto:Alexandra\_Mallus@ios.doi.gov">Alexandra\_Mallus@IOS.DOI.GOV

We appreciate your assistance and cooperation in this regard.

CC:  
FOIA Designated Attorneys  
Bill Wolf, PMO  
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Stephanie Hanna, OCO  
Nancy Appler, OCI

1220 - RECORDS AND INFORMATION MANAGEMENT  
GRS/BLM Combined Records Schedules

**Schedule 14 - Information Services Records Disposition**

**Introduction**

This schedule covers certain records pertaining to informational services performed by BLM offices in their day to day affairs and in their relations with the public; including records created in administering Freedom of Information Act and Privacy Act programs. Except as otherwise specified in individual items, it applies to copies of these records wherever located in the bureau. Item 4 applies only to files maintained in the Headquarters office, responsible for the operation of the informational activities of BLM. Items 11 through 15 describe the files accumulated in carrying out the provisions of the Freedom of Information Act, and items 21 through 26 describe the files created in administering the provisions of the Privacy Act. Items 31 through 35 cover records created in response to requests for mandatory records declassification.

These records consist of inquiries, replies, and related correspondence; FOIA, Privacy Act, and mandatory declassification files, appeals, and other records; administrative background files for formal information releases; and records relating to inappropriate release of privileged information. Closely related records are covered by other schedules, such as records relating to budget presentation (Schedule 5) and printing, duplicating, and distribution records (Schedule 13). Records created prior to January 1, 1921, must be offered to NARA for appraisal before you may apply this schedule.

All records described in this schedule are authorized for disposal in both hard copy and electronic forms, as provided in Schedule 20.

Item	Record Series Description	Disposition Authority
1	<b>PUBLIC INFORMATION REQUESTS FILES [1120].</b> Requests for information and copies of replies thereto, involving no administrative actions, no policy decisions, and no special compilations or research, and requests for and transmittals of publications, photos, and other informational literature. Confidentiality: Non-public record category 3. Location: All.	TEMPORARY. Destroy when 3 months old or when no longer needed, whichever is sooner. GRS 14/1.
2	<b>PUBLIC ACKNOWLEDGMENT FILES [1120].</b> Acknowledgment and transmittals of inquiries and requests that have been referred elsewhere for reply. Confidentiality: Non-public record category 3. Location: All.	TEMPORARY. Destroy 3 months after acknowledgment and referral. GRS 14/2.
3	<b>PRESS SERVICE FILES [1120].</b> Press service teletype news, similar materials. Includes news clippings and "information only" copies of press releases and speeches from other offices. Forms: BLM 1120-7. Confidentiality: Public record category 1. Location: All. Exclusions: Record copies of official news releases (Schedule 14/37).	TEMPORARY. Destroy when 3 months old. GRS 14/3.
4	<b>PUBLIC INFORMATION PROJECT FILES [1120].</b> Informational services project case files maintained in formally designated information offices. Includes event plans, publicity plans, documentation of media coverage, advertising, copies of mailing lists, follow-up evaluations. Confidentiality: Non-public record category 3. Location: WO, SO, FO.	TEMPORARY. Destroy 1 year after close of file or 1 year after completion of project. GRS 14/4.
5	<b>PUBLIC COMMENDATION &amp; COMPLAINT CORRESPONDENCE FILES [1120].</b> Anonymous letters, letters of commendation, complaint, criticism, and suggestion and replies thereto. Confidentiality: Non-public record category 3. Location: All. Exclusions: Those records on the basis of which investigations were made or administrative action taken and those incorporated into individual personnel records (Schedule 1/1).	TEMPORARY. Destroy when 3 months old. GRS 14/5.

6	PUBLICATIONS INDEXES AND CHECKLISTS [1550]. Bibliographies, checklists, and indexes of BLM publications and releases. Confidentiality: Public record category 1. Location: All. Exclusions: Indexes and checklists relating to record sets scheduled as permanent which are transferred to NARA with the related records (Schedule 16/31a) and library indexes (Schedule 23/9).			TEMPORARY. Destroy when superseded or obsolete. GRS 14/6.	
7-10	Reserved				
11	FREEDOM OF INFORMATION ACT (FOIA) REQUESTS FILES [1278]. Files created in response to requests for information under FOIA consisting of the original request, a copy of the reply thereto, and all related supporting files which may include official file copy of request record or copy thereof. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-71. Location: All.				
	a.	FOIA Requests Case Files. Case files, containing the request, reply, other correspondence, and supporting documents, arranged by request number. Exclusions: Official file copy of the records requested if filed herein (item b).			
		(1)	Granting Access to All Requested Records.	TEMPORARY. Cutoff EOFY of reply. Destroy 2 years after cutoff. GRS 14/11a(1).	
		(2)	Responses to FOIA Requests. Responding to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay agency reproduction fees.		
			(a)	FOIA responses not appealed.	TEMPORARY. Cutoff EOFY of reply. Destroy 2 years after cutoff. GRS 14/11a(2)(a).
			(b)	FOIA responses appealed.	Destroy as authorized under Schedule 14/12. GRS 14/11a(2)(b).
		(3)	Denying Access to All or Part of Records Requested.		
			(a)	FOIA denials not appealed.	TEMPORARY. Cutoff EOFY of reply. Destroy 6 years after cutoff. GRS 14/11a(3)(a).
			(b)	FOIA denials appealed.	Destroy as authorized under Schedule 14/12. GRS 14/11a(3)(b).
	b.	Official File Copy of Requested Records.			Dispose of in accordance with approved BLM disposition instructions for the related records, or with the related FOIA request, whichever is later. GRS 14/11b.

<b>12</b>	<b>FOIA APPEALS FILES [1278].</b> Files created in responding to administrative appeals under the FOIA for release of information denied by BLM, consisting of the appellant's letter, a copy of the reply thereto, and related supporting documents, which may include the official file copy of records under appeal or copy thereof. Confidentiality: Nonpublic record category 3; Privacy Act System Interior/OS-69. Location: All.		
	a.	Correspondence and Supporting Documents. Exclusions: the file copy of the records under appeal if filed herein.	TEMPORARY. Destroy 6 years after final determination by agency, 6 years after time at which a requester could file suit, or 3 years after final adjudication by the courts, whichever is later. GRS 14/12a.
	b.	Official File Copy of Records under Appeal.	TEMPORARY. Dispose of in accordance with approved agency disposition instructions for the related records or with the related FOIA request whichever is later. GRS 14/12b.
<b>13</b>	<b>FOIA CONTROL FILES [1278].</b> Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requestor. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-71. Location: All.		
	a.	FOIA Control Registers or Listing.	TEMPORARY. Cutoff EOFY. Destroy 6 years after date of last entry. GRS 14/13a.
	b.	FOIA Control Files - Other.	TEMPORARY. Cutoff EOFY. Destroy 6 years after final action by BLM or after final adjudication by courts, whichever is later. GRS 14/13b.
<b>14</b>	<b>FOIA REPORTS FILES [1278].</b> Recurring reports and one-time information requirements relating to the agency implementation of the Freedom of Information Act. Exclusions: Annual reports to the Congress at the departmental or agency level. Confidentiality: Nonpublic record category 3. Location: All.		TEMPORARY. Cut EOFY. Destroy when 2 years old or sooner if no longer needed for administrative use. GRS 14/14.
<b>15</b>	<b>FOIA ADMINISTRATIVE FILES [1278].</b> Records relating to the general agency implementation of the FOIA, including notices, memoranda, routine correspondence, and related records. Confidentiality: Nonpublic record category 3. Location: All.		TEMPORARY. Destroy when 2 years old or sooner if no longer needed for administrative use. GRS 14/15. Note: If filed as general subject files, use Schedule 23/1a.
<b>16-20</b>	<b>Reserved</b>		

21	<b>PRIVACY ACT (PA) REQUEST FILES [1278].</b> Files created in response to requests from individuals to gain access to their records or to any information in the records pertaining to them, as provided under 5 USC 552a(d)(1). Files contain original request, copy of reply thereto, and all related supporting documents, which may include the official file copy of the records requested or copy thereof. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.				
	a.	PA Request Correspondence and Support Documents. Exclusions: The official file copy of the records requested if filed herein.			
		(1)	Granting Access to All Requested Records.		TEMPORARY. Destroy 2 years after date of reply. GRS 14/21a(1).
		(2)	Responses to PA Requests. Responding to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay reproduction fees.		
			(a)	PA responses not appealed.	TEMPORARY. Destroy 2 years after date of reply. GRS 14/21a(2)(a).
			(b)	PA responses appealed.	Dispose of in accordance with the approved disposition instructions for the related subject individual's records, or 3 years after final adjudication by courts, whichever is later. GRS 14/21a(2)(b).
		(3)	Denying Access to All or Part of Records Requested.		
			(a)	PA denials not appealed.	TEMPORARY. Destroy 5 years after date of reply. GRS 14/21a(3)(a).
			(b)	PA denials appealed.	Dispose of in accordance with the approved disposition instructions for the related subject individual's records, or 3 years after final adjudication by courts, whichever is later. GRS 14/21a(3)(b).
	b.	Official File Copy of Requested Records.			Dispose of in accordance with approved disposition instructions for the related records, or with the related Privacy Act request, whichever is later. GRS 14/21b.

22	<b>PRIVACY ACT AMENDMENT CASE FILES [1278].</b> Files relating to an individual's request to amend a record re. that individual as provided for under 5 USC 552a(d)(2); to the individual's request for a review of an agency's refusal of the individual's request to amend a record as provided for under 552a(d)(3); and to any civil action brought by the individual against the refusing agency as provided under 5 USC 552a(g). Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.		
	a.	PA Requests to Amend Agreed to by BLM. Includes individual's requests to amend and/or review refusal to amend, copies of BLM replies thereto, and related materials.	Dispose of in accordance with the approved disposition instructions for the related subject individual's record or 4 years after BLM's agreement to amend, whichever is later. GRS 14/22a.
	b.	PA Requests to Amend Refused by BLM. Includes individual's requests to amend and to review refusal to amend, copies of BLM replies thereto, statement of disagreement, BLM justification for refusal to amend the record, and related materials.	Dispose of in accordance with the approved disposition instructions for the related subject individual's record, 4 years after final determination by BLM, or 3 years after final adjudication by courts, whichever is later. GRS 14/22b.
	c.	PA Requests to Amend Appealed. Includes all files created in responding to appeals under the Privacy Act for refusal by any agency to amend a request.	Dispose of in accordance with the approved disposition instructions for the related subject individual's records, or 3 years after final adjudication by courts, whichever is later. GRS 14/22c.
23	<b>PRIVACY ACT ACCOUNTING OF DISCLOSURE FILES [1278].</b> Files maintained under provisions of 5 USC 552a(c) for accurate accounting of the date, nature, and purpose of each disclosure of a record to any person or another agency, including forms showing subject individual's name, requestor's name and address, purpose and date of disclosure, and proof of subject individual's consent when applicable. Confidentiality: Non- public record category 3; Privacy Act System Interior/OS-57. Location: All.		Dispose of in accordance with the approved disposition instructions for related subject individual's records, or 5 years after the disclosure for which the accountability was made, whichever is later. GRS 14/23.

24	<b>PRIVACY ACT CONTROL FILES [1278].</b> Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature of request, and name and address of requestor. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.		
	a.	PA Control Registers or Listings.	TEMPORARY. Destroy 5 years after date of last entry. GRS 14/24a.
	b.	PA Control Files - Other.	TEMPORARY. Destroy 5 years after final action by BLM or final adjudication by courts, whichever is later. GRS 14/24b.
25	<b>PRIVACY ACT REPORT FILES [1278].</b> Recurring reports and one-time information requirement relating to agency implementation, including biennial reports to the Office of Management and Budget, and the Report on New Systems. Confidentiality: Nonpublic record category 3; Privacy Act System Interior/OS-57. Location: All.		TEMPORARY. Destroy when 2 years old. GRS 14/25.
26	<b>PRIVACY ACT GENERAL ADMINISTRATIVE FILES [1278].</b> Records relating to the general agency implementation of the Privacy Act, including notices, memoranda, routine correspondence, and related records. Confidentiality: Nonpublic record category 3. Location: All.		TEMPORARY. Destroy when 2 years old or sooner if no longer needed for administrative use. GRS 14/26. Note: If filed as general subject files, use Schedule 23/1a.
27-30	<b>Reserved</b>		
31	<b>MANDATORY REVIEW FOR DECLASSIFICATION REQUESTS FILES.</b> Files created in response to requests for information under the mandatory review provisions of executive order (E.O.) 12356 consisting of the original request, a copy of the reply thereto, and all related supporting files, which may include the official file copy of requested records or a copy thereof.		BLM does not maintain files related to EO 12356 that are described in GRS 14/31
32	<b>MANDATORY REVIEW FOR DECLASSIFICATION APPEALS FILES.</b> Files created in responding to administrative appeals under the mandatory review provisions of E.O. 12356 and its predecessors for release of information denied by the agency. Files consist of the appellant's letter, a copy of the reply thereto, and related supporting documents, which may include the official file copy of records under appeal or copy thereof.		BLM does not maintain files related to EO 12356 that are described in GRS 14/32.
33	<b>MANDATORY REVIEW FOR DECLASSIFICATION CONTROL FILES.</b> Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requester.		BLM does not maintain files related to EO 12356 that are described in GRS 14/33.
34	<b>MANDATORY REVIEW FOR DECLASSIFICATION REPORTS FILES.</b> Reports relating to agency implementation of the mandatory review provisions of the current Executive Order on classified national security information, including annual reports submitted to the Information Security Oversight Office.		BLM does not maintain files related to EO 12356 that are described in GRS 14/34.



35	<b>MANDATORY REVIEW FOR DECLASSIFICATION ADMINISTRATIVE FILES.</b> Records relating to the general agency implementation of the mandatory review provisions of the current Executive Order on classified national security information, including notices, memoranda, correspondence, and related records.		BLM does not maintain files related to EO 12356 that are described in GRS 14/35.
36	<b>ERRONEOUS RELEASE FILES [1278].</b> Files re. the inadvertent release of privileged information to unauthorized parties, containing information the disclosure of which would constitute an unwarranted invasion of personal privacy. Files contain requests for information, copies of replies thereto, and all related supporting documents, and may include the official copy of records requested or copies thereof. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.		
	a.	Files That Include the Official File Copy of the Released Records.	TEMPORARY. Follow the disposition instructions approved for the released official file copy, or destroy 6 years after the erroneous release, whichever is later. GRS 14/36a.
	b.	Files That Do Not Include the Official File Copy of the Released Records.	TEMPORARY. Destroy 6 years after erroneous release. GRS 14/36b.
37	<b>NEWS RELEASES, SPEECHES, COMMENTS MASTER FILES [1120].</b> Record copies of official BLM news releases, speeches, addresses, comments and other public issuances, maintained by office of origin. Confidentiality: Public record category 1. Location: All. Exclusions: Reference copies (Schedule 14/3).		PERMANENT. Cutoff EOFY. Transfer to FRC when 5 years old. FRC transfers to NARA in 5-year blocks when most recent records are 20 years old (e.g., transfer FY80-84 in FY2005). Transfer audiovisual records to NARA in accordance with GRS 21. NARA Job NC1-49-85-2, 14/1.

<b>CROSS-REFERENCES:</b>		
<b>INFORMATION SERVICES NONRECORD WORKING FILES, BACKGROUND MATERIALS, AND REFERENCES.</b> Working copies of official documents; notes, drafts, preliminary or interim data used to prepare final documents; other work papers and nonrecord copies of documents re. information services.	See Schedule 23/21.	
<b>INFORMATION SERVICES NONRECORD MICROFORM.</b>	See Schedule 23/22.	
<b>INFORMATION SERVICES TRACKING AND CONTROL FILES.</b> Hard copy and electronic logs, registers, or other tracking and control files used to control or document the status of information services records. Exclusions: FOIA control files (Schedule 14/13) and Privacy Act control files (Schedule 14/24).	See Schedule 23/8.	
<b>INFORMATION SERVICES FINDING AIDS.</b> Indexes, lists, registers, and other finding aids related to information services records, excluding records that contain abstracts or other information that can be used as an information source apart from the related records. Exclusions: Publications indexes and checklists (Schedule 14/6).	See Schedule 23/9.	
<b>INFORMATION SERVICES ADMINISTRATIVE DATA BASES.</b>	See Schedules 20/3 and 23/3.	

BLM Manual Rel. 1-####

Supersedes Rel. 1-1645##/###/##

**draft**

**BLM  
FREEDOM  
OF  
INFORMATION  
ACT  
HANDBOOK**

**H-1278-1**

**Note: Current regulations/procedures pertaining to the EFOIA amendments are not included in this draft handbook.**

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### A. Purpose of this Handbook.

This Handbook will cover information access procedures that are related specifically to processing FOIA requests, or responding to requests for sensitive information when the FOIA is not cited in the request. BLM policy was provided in Manual Section 1278. Other Manual Sections or Handbooks addressing information access areas are:

1. 1270 - Records Administration;
2. H-1270-1 - Electronic Records Administration;
3. 1270-2 - Cost Recovery;
4. 1271 - Information Access Center;
5. 1278 - External Access to BLM Information; and
6. 1220 - Records and Information Management

#### **E. Relationship to the Privacy Act.**

If an individual requests information on himself/herself that is contained in a Privacy Act system of records and cites only the FOIA, the request should also be processed under both the FOIA and the Privacy Act, so that the individual is granted the greatest access possible.

##### **1. Procedures when an individual requests records on themselves:**

a. If the Privacy Act does not exempt the information from disclosure (the exemption must be published in a Bureau regulation), then the person should receive access to his Privacy Act records.

b. If a Privacy Act exemption applies, a FOIA exemption must also apply to withhold the information from the individual under whom the Records System is filed.

c. An agency must be able to invoke BOTH the Privacy Act and the FOIA in order to withhold the information from the individual under whom the Records System is filed.

##### **2. Procedures when a third party requests records from a privacy system about another individual:**

a. If the third party requesting information on another individual falls under one of the "exceptions" listed by the Privacy Act, then it is not required that the Bureau obtain consent from the subject of the file to disclose the information. If an exception does not apply to the information in the System of Records in question, then consent to the Bureau must be provided in writing by the subject of the files for information not exempt under the FOIA in order for that information to be released to a third party.

b. If either a FOIA exemption, or Privacy Act exemption can be applied to any of the information requested, then the information must be withheld.

#### **F. Congressional FOIA Requests.**

FOIA requests from Members of Congress which are not official committee or subcommittee requests are processed as a requests from "any person" under the FOIA, and do not trigger the special access rule of subsection (d) of the FOIA. If a FOIA request is received from a Member of Congress which is

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on behalf of Congress through a legislative committee or subcommittee, the request falls within subsection 5 U.S.C. 552(d) of the FOIA, and only a specially authorized claim of executive privilege can be applied to justify withholding information. Refer to BLM Manual - External Access to BLM Information, Section 1278.4 for appropriate procedures.



#### **G. FOIA Requests Which Include Records Originated from the White House:**

In processing FOIA requests, agencies searching for responsive records occasionally find White House-originated records (or records containing White House-originated information) that are located in their files. The Department issued the following guidance on handling information responsive to a FOIA request in this instance:

1. Contact the Departmental FOIA Officer;
2. The DOI FOIA Officer will consult with the White House on responsive records; and
3. The Department will then be responsible for responding to the FOIA requester once the consultation process has been completed.

#### **H. Requests for Information Involving Inspector General Investigations:**

Some information responsive to a FOIA request may include information which originated because of an Office of Inspector General (OIG) investigation. The Department of Interior OIG has requested that if a request involves IG investigations and background material to do the following:

1. Requests for OIG reports should be referred to the OIG as soon as possible;
2. If the Bureau originated the background information (not report) the Bureau will respond to the FOIA requester, but after consultation with the IG; and
3. If the IG investigates the activity of the Bureau (and not a third party at the request of the Bureau), then the IG would review documents for a FOIA request, and with consultation with the Bureau.

#### **I. FOIA Requests from Other Federal Agencies.**

The FOIA does not apply to other Federal agencies. Since the FOIA is not intended for other Government agencies to use as access to information from another agency, BLM should encourage another agency to develop an instrument such as an interagency agreement, or data share agreement (see Manual Section 1278.6 on Agreements to Share Data). These documents are used to purchase or exchange data between agencies when there is an interest in obtaining Bureau information on more than one occasion, or on an ongoing basis.

#### **J. Other Special Requests for BLM Information.**

BLM Manual - External Access to BLM Information Section 1278.5 provides guidance on the handling Bureau information in special circumstances. Guidance can be found on the following topics:

1. Disclosure of Confidential Information to Other Federal Government Offices;
2. Disclosure to State or Local Agencies;
3. Court Orders to Produce Documents; and
4. Requests for Equal Employment Opportunity Documents.

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**K. The FOIA and Agreements to Share Data.**

An instrument to share data shall not be used when the arrangement with the other party can be handled using standard BLM operating procedures such as the BLM information access centers or external access procedures that are available to all external entities (such as under the FOIA). See BLM Manual Section 1278.6 - Agreements to Share Data.

When sensitive information is received from State and local sources in agreements to share data, BLM can not agree to maintain the confidentiality of this information except to the extent that it is permitted under the FOIA. BLM will not share or exchange records/data that are either involved in litigation; or covered by a Privacy Act System notice that precludes disclosure. Any data sharing agreements involving online access should be reviewed by the designated security officer, and FOIA Coordinator, or BLM FOIA Officer.

**L. Relationship to BLM Records Access Categories.**

Records Access Categories were developed by BLM as an attempt to make records more accessible to the public, and facilitate Bureau responses for information, while at the same time protecting sensitive information.

Although the FOIA and the Privacy Act are only required to be cited for non-public information (Category 3, and portions of some Category 1 & 2 files for which sensitive information is kept segregated from the public information), the public may choose to cite the FOIA for public information as well which may be accessed in information centers (fee waiver and reduction of fees are some reasons why).

The procedures and guidance provided in this handbook also applies to these requests for public records which cite the FOIA. Refer to Manual Section 1278.2 - Access to BLM Public Records.

**1. The following are BLM Records Access Categories:**

**a. Public Records - Category 1:** Some files may have sensitive information which are required to be marked, and separated from the releasable portions when requested by the public. Requests for this sensitive segregated information must cite the FOIA, and responses processed under the FOIA. Release of sensitive information will be determined following appropriate FOIA exemption review.

In cases where it would be easier and less costly for the FOIA requester to access Bureau public records without citing the FOIA, BLM may notify the requester and suggest that they formally withdraw the FOIA request. However, BLM must respond using FOIA procedures unless the FOIA requester has provided approval in writing for withholding the original FOIA request.

**b. Discretionary Records - Category 2** (Electronic Records and Outputs and State-specific information determined releasable to the public):

The records placed in this Discretionary Records Category are records which BLM has chosen to make available to the public at a cost (as opposed to the free for view records in Category 1). A FOIA request is not required to access the public information made available by the states.

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## Chapter 1 - Introduction

**c. Non-Public Records - Category 3** (Limited Access Records). These records include all records not designated in publicly available records categories (see Manual Section 1278.3 - BLM Non-Public Information):

If requests are made for information in this category, and the information is considered exempt under one of the nine FOIA exemptions or require Privacy Act procedures, and the FOIA or Privacy Act have not been cited, the BLM employee handling the request must apply FOIA procedures as outlined in this Handbook. See sample #12 for sample language indicating to the requester that the FOIA is being applied to a request for information which is exempt under the FOIA.

**M. Requests for Databases and Disclaimer Statements.**

Whether or not a FOIA request is made for electronic data, the Bureau requires that a disclaimer label be placed on electronic records, or printouts from databases that are provided to anyone outside the Bureau.

Disclaimer statements should be provided with the electronic tape, or marked on the first page of each hardcopy printout. Refer to Sample language #30.

1. Disclaimer labels for Record Access Categories 1 and 2 should read:

"NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY THE BUREAU OF LAND MANAGEMENT"

2. Disclaimer labels for Record Access Category 3 should read:

"NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT TO THE ACCURACY, RELIABILITY, OR COMPLETENESS OF THESE DATA FOR INDIVIDUAL USE OR AGGREGATED USE WITH OTHER DATA"

**H-1278-1 - FREEDOM OF INFORMATION ACT HANDBOOK  
Chapter 2 - Administrative Requirements Under the FOIA**

**CHAPTER II - ADMINISTRATIVE REQUIREMENTS UNDER THE FOIA**

**A. FOIA Procedures.**

Department of the Interior (DOI) guidelines in implementing the FOIA can be found at 43 CFR Part 2, Subpart B, Department Manual Section 383 DM 15, and BLM policy in Manual Section 1278. This chapter identifies those administrative requirements for the submission of a FOIA request, and appropriate response to those requests.

If a verbal request is made for information which is considered sensitive and non-public, the requester should be asked to submit the request in writing, citing the FOIA, and including the elements of a FOIA request in section B below.

When a written request is received which does not cite the FOIA, and the request is for information which is sensitive and non-public, the request should be treated as a FOIA request, and the guidelines set forth in this Handbook will apply to preparing the response.

**B. Identifying a FOIA Request.**

An incoming FOIA request should include the following information (43 CFR 2.14):

**1. It should be in writing** and specifically cite the Act.

**2. Must reasonably describe the records requested.** Sufficient information must be provided so that an employee familiar with the subject area of the request can locate the record with a reasonable amount of effort. The office responsible for the records should contact the FOIA requester for clarification (by phone or in writing - See sample language #1 for a clarifying a vague request, and sample language #2 for clarifying an overly broad request).

Clarification may be provided by the FOIA requester in writing, or by telephone. Documentation on this action should be kept with the FOIA file and referred to in the response.

The BLM employee who is familiar with the requested documents, and how they are retrieved or stored, may be able to explain to the requester how records are maintained, and provide assistance in clarifying a vague request, or narrowing a broad request.

Until the questions above are resolved, the request may be deemed not to have been received in proper form and the 10-working day time limit is not started until adequate clarification is provided.

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**3. Must specify the fee category, address the maximum amount of fees that the requester is willing to pay, or include a request for a fee waiver (see 43 CFR 2.20, and Manual Section 1278).**

If the above fee information is not provided by a requester, or is too vague or broad and requires clarification, the request may be deemed not to have been received in proper form and the 10-working day time limit is not started until adequate clarification is provided.

Offices handling requests are encouraged to communicate with the requester promptly and obtain the required fee information in writing in order to expedite the request processing. The clarification should be placed in the FOIA case file.

Refer to sample language #3 on fee waiver clarification; sample language #14 for willingness to pay fees when under \$250; and sample language #17 when fees exceed \$250.

**C. Creation of a Record.**

A request may seek only records that are in existence at the time the request is received (43 CFR 2.14(c)). See sample language #19 when records do not exist.

**D. Ongoing FOIA Requests:**

The FOIA does not require an agency to provide records that will be created or finalized after the date on which the FOIA is received. Therefore, there are no "ongoing" FOIA requests, and requesters for information which has not yet been created should be notified that the record is not yet available, and another FOIA should be sent when it is ready. See sample language #18 for responses when records are not yet created or compiled. Appeal language should be provided to the requester as well.

**E. Annual Report.**

The FOIA requires each Federal agency to compile and submit to the Congress, on or before March 1, a report of its FOIA activities during the previous calendar year. The Bureau FOIA Officer will collect report information from each respective State Office, Service Center, and from Fire and Aviation, and provide that report to the Department FOIA Officer on or before February 1.

The FOIA specifies certain matters that the report must cover. Illustration 2 is a sample of the FOIA annual report sent to the DOI FOIA Officer. The DOI FOIA Officer then combines all DOI Bureau reports and submits one report to Congress. Illustration 1 identifies the type of log which if kept with the FOIA file will assist in preparing the annual report.

**Chapter 2  
Illustration 1, Page 1**

## H-1278-1 - FREEDOM OF INFORMATION ACT HANDBOOK

### Chapter 2 - Administrative Requirements Under the FOIA

## Example of Data Collection Log For The FOIA Annual Report

(INFORMATION WILL BE PROVIDED BY THE FOIA COORDINATOR AND OFFICE RESPONSIBLE FOR THE RECORDS:

I. (Action Office Code) for FOIA REQUEST No. (FOIA CONTROL #) from  
(Name of FOIA Requester).

II. Request Denied?: NO \_\_\_\_ Yes \_\_\_\_\* Partially \_\_\_\_ \*

FOIA Exemption(s) Invoked \_\_\_\_\_

If Exemption 3 what statute was cited: \_\_\_\_\_

Partial/Full denials (fee waivers or information) must be reviewed with the Solicitor. Solicitor who reviewed documents and letter was: \_\_\_\_\_

\* Harm Statements for Discretionary Disclosure Exemption which were Applied Are Attached

III. Request not fully complied with because:

- G Can't identify records  
G Requester refused to pay fees  
G No records can be located  
G Request was withdrawn  
G Referred to another: \_\_\_\_Agency \_\_\_\_Bureau  
G Information provided previously  
G Would require creating a record  
G Other: (fugitive of the law, protected by copyright law, etc.)

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(Cont'd)

- IV. Extension taken to:
- G Get records from another source
  - G Search & examine large amounts of records
  - G Consult with:
    - G Another Agency
    - G Other component in Interior
    - G Submitter of the information
- V. Following guidelines in 43 CFR Part 2, Appendix 1, and Appendix to BLM Handbook on Cost Recovery, H-1270-3, the total costs are: \$\_\_\_\_\_ (list below).
- # Clerical Search Time @ \$2.30/quarter hr.: \_\_\_\_\_
  - # Clerical Review Time @ \$2.30/quarter hr.: \_\_\_\_\_
  - # Managerial Search Time @ \$4.65/quarter hr.: \_\_\_\_\_
  - # Managerial Review Time @ \$4.65/quarter hr.: \_\_\_\_\_
  - # Photocopy @ \$.13/page: \_\_\_\_\_
  - # Other Reproduction (Actual Costs): \_\_\_\_\_
  - # Certifications @ \$ .25/each \_\_\_\_\_
  - # Electronic Records @ Bureau-wide Rates: \_\_\_\_\_
  - # Postage (Exceeding 1st Class): \_\_\_\_\_
- # Request falls into this fee category:
- G Other      G Commercial Use
  - G News Media   G Educational & Noncommercial Scientific Institute
- G Costs minus fee deductions under 43 CFR 2.20 are: \$\_\_\_\_\_
- VI. Date Reply Mailed: \_\_\_\_\_
- VII. Certified Mail Receipt #: \_\_\_\_\_

RESPONSE MUST BE MAILED BY \_\_\_\_\_  
RETURN THIS OFFICIAL CASE FILE, INCLUDING BACKGROUND MATERIAL AND FILE COPIES OF  
THE RESPONSE TO \_\_\_\_\_, STATE RECORDS ADMINISTRATOR.

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Sample of a Completed FOIA Annual Report

DEPARTMENT OF THE INTERIOR  
Freedom of Information Act 1992 Annual Report  
(January 1 - December 31, 1993)

Bureau/Office Bureau of Land Management  
Reporting Official Bureau FOIA Officer  
Telephone No. (202) 452-5013  
Date January 28, 1994

1. Requests received. 1213

2. Denials and noncompliance.

a. Number of requests fully or partially denied: 93

b. Number of times each exemption under Subsection  
552(b) was invoked in making the denial:\*

<u>Exemption</u>	<u>Times invoked</u>
1	<u>0</u>
2	<u>0</u>
3	<u>5</u>
4	<u>21</u>
5	<u>25</u>
6	<u>33</u>
7	<u>15</u>
8	<u>0</u>
9	<u>4</u>

\* In some cases, more than one exemption may be cited in denying a single request.



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**Chapter 2 - Administrative Requirements Under the FOIA**

**Sample of a Completed FOIA Annual Report**

c. List of statutes invoked under the use of Exemption 3:

- 3 Archaeological Resources Protection Act, 1979 (CO)(NV)(NM)
- 1 National Historic Preservation Act of 1966, Sections 3&4 (NV)
- 1 Federal Coal Leasing Amendments of 1976 (NM)
- 1 Indian Mineral Development Act [I] (UT)

d. List of names and titles of officials denying records and the number of instances for each official: \*

<u>Name and Title</u>	<u>No. of Instances</u>
Martha Hahn Associate State Director/Colorado State Office	1
Bob Moore State Director/Colorado State Office	2
David Strunk Acting State Director/Colorado State Office	1
Lester Rosenkrance State Director/Arizona State Office	4
Bruce Conrad Associate State Director/Arizona State Office	6
Ted Bingham Associate State Director/Arizona State Office	1
Marilyn Johnson Acting State Director/Arizona State Office	1
Pieter J. Van Zanden Acting State Director/Idaho State Office	2
Delmar D. Vail State Director/Idaho State Office	4
Edward Spang State Director/Alaska State Office	4
Marvin LeNoue Denver Service Center Director	2

.....ETCETERA

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Chapter 2 - Administrative Requirements Under the FOIA

Sample of a Completed FOIA Annual Report

e.	Number of requests not fully complied with (Other authority):	
	(1) Requester's failure to adequately identify records.	<u>28</u>
	(2) Refusal to pay fees.	<u>64</u>
	(3) Nonpossession of records by Interior. (Records do not exist).	<u>128</u>
	(4) Referred to another agency.	<u>15</u>
	(5) Request withdrawn.	<u>38</u>
	(6) Request referred to another bureau.	<u>18</u>
	(7) Requested information previously furnished.	<u>48</u>
	(8) Other (explanation).	<u>14</u>
3.	<u>Fees.</u>	
	Total amount of fees collected from the public.	<u>\$24,714</u> *
4.	<u>Costs.</u>	
	Total cost to administer the FOIA.	<u>\$460,404</u>

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Chapter 2 - Administrative Requirements Under the FOIA

- |   |           |
|---|-----------|
| 5. <u>Number of time extensions taken and the reason for each.</u>                  |           |
| a. The need to search for and collect the requested records from another source.    | <u>16</u> |
| b. The need to search for, collect, and examine a voluminous amount of records.     | <u>58</u> |
| c. Consultation with another agency, or other components in Interior.               | <u>33</u> |
| 6. <u>Availability of records.</u>  |           |
| List new categories of records, or segregable portions thereof, now being released. | <u>0</u>  |
- 

**Tips in Preparing the Annual Report**

1. All FOIA Coordinators are required to keep a log of FOIA fees collected. The Department may request that BLM submit a copy of their log during the reporting process; therefore, an accurate log of fees collected should be maintained by each reporting office.
2. All reporting offices should compare previous year figures with current reporting year figures. Any change (+ or -) of \$5,000 or more requires a written justification explaining the reason for such change.
3. Only one denying official per denial should be reported under item 2d of the report. Solicitors should not be listed as the denying official. The denying official is the person authorized to sign FOIA denials or any officials whom they have designated in writing. Each denying official's location should also be identified.

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**Chapter 2 - Administrative Requirements Under the FOIA**

4. A major concern of the Departmental FOIA Officer is the COST TO ADMINISTER THE FOIA, the following areas have been identified as costs that should be included:
  - a. A percentage of your clerical support person(s) salary should be included in this calculation, along with all persons directly responsible for administering the FOIA, e.g., Specialists/Coordinators 75-100% of salary, Secretaries/Clerk Typists 30-50% of salary, FOIA Officer/Supervisor roughly 25% of salary, and Program Specialists at a combined 100% of one GS-13's salary (these percentages will vary from office to office based on individual activities);
  - b. All costs for FOIA training/travel should be included;
  - c. All costs waived due to the \$15 threshold should be included; and
  - d. All costs that were not factored in because of "fee category", e.g., news media (search time), should also be included in the cost to administer FOIA.

**H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK**  
**Chapter 3 - Determining What is Exempt from Disclosure**

**CHAPTER 3 - DETERMINING WHAT IS EXEMPT FROM DISCLOSURE**

**A. Introduction.**

The elements required in preparing a response which withholds information under a FOIA exemption are discussed in Chapter 4. This Chapter provides guidelines on understanding the FOIA exemptions, the recent case laws which help to clarify use of the exemptions, and how to review BLM information to determine if a FOIA exemption applies. Further guidance may be found in Department of Justice's yearly Freedom of Information Act Guide & Privacy Act Overview, BLM Manual Section 1278.3, the Department's Handbook at 383 DM 15, and 43 CFR 2.13(c).

**1. Some Steps Involved:**

- a. Pull all documents responsive to the FOIA request;
- b. Examine them for information which have originated with another Government agency, or Departmental bureau or office. (See sample language #7 for transferring information to another agency for review);
- c. Identify under which Records Access Category they fall. Category 3 indicates that exempt information may be included in the document, and the reasons for invoking an exemption may already be documented. Category 1 & 2 records have already been reviewed for exempt information, and the portions which are exempt should be clearly marked, segregated in the file, and not provided to the public for view under routine access procedures.

(Note: If exempt information has been made available for public viewing in a reading room, then the BLM likely has waived its ability to assert the exemption in responding to a FOIA request).

- d. Review the FOIA Exemption Checklist against the material at hand, and determine whether it is necessary to make a sound grounds determination before invoking an exemption to withhold the material.
- e. Make a further analysis using the guidelines in this chapter;
- f. Consult with the FOIA Coordinator when there is a question;
- g. Make a list of documents proposed for withholding; and
- h. Consult with the office's designated FOIA attorney to determine if the documents proposed for withholding fall under a FOIA exemption.

**B. Reasons Access May be Denied Under the FOIA.**

The 9 FOIA exemptions protect against disclosure of information that, for example, would harm the privacy of individuals, proprietary interests of businesses, functioning of the Government, and law enforcement investigations. See 5 U.S.C. 552(b), and 43 CFR 2.13(c) for a listing of the exemptions.

When a record contains some information that meets the legal definition of the FOIA exemption, only that portion of the record that applies to the exemption may be withheld. The FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after the deletion of the portions that are exempt. However, certain exemptions such as the attorney-work product privilege of exemption 5 will protect information in its entirety.

## H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK

### Chapter 3 - Determining What is Exempt from Disclosure

#### C. Identifying Harm When Citing Discretionary Disclosure Exemptions.

The White House and Attorney General recently have required the following considerations. From the list of "discretionary disclosure" exemptions below, the Bureau may apply the exemptions to withhold information only when the agency reasonably foresee that disclosure would be harmful to the interest protected by the exemption.

To invoke these exemptions the Department has required Departmental agencies to develop a statement identifying what harm would result if the information were released, (see IM 94-441, dated July 27, 1994). A sample of a harm statement is in Illustration 1 of this Chapter, and a sample of an affidavit developed for BLM to document attorney review is in Illustration 1 of this Chapter.

1. "Low" Exemption 2;
2. Exemption 5;
3. Exemption 6 (**To the extent that the information is not covered by the Privacy Act**);
4. Exemption 7(C) & 7(D) (**To the extent the information is not covered by the Privacy Act**);
5. Exemption 7(E);
6. Exemption 8
7. Exemption 9

The FOIA Coordinator will ensure that the document identifying foreseeable harm, and Solicitor review is completed and maintained in the FOIA case file for use if a FOIA appeal is filed with the Department FOIA Appeals Officer. In the response to the FOIA requester, an identification of harm **CHECK DOI POLICY - Stephanie says its wrong** must be included with the FOIA exemption cite for the information being withheld. See sample language #21 for an example of harm statements.

#### D. Preparing a Response Denying Information.

The office responsible for creating and/or maintaining the records shall provide the FOIA Coordinator with feedback on what information might be exempt under the FOIA. The FOIA Coordinator will review the recommendations for withholding documents, and request that the designated FOIA attorney review the response, any documents which are proposed for withholding and any harm statements.

The proposed response sent to the designated FOIA attorney shall also include a list of the documents being withheld. The list should include the following information: Date, subject, who the letter or memo is to and from or when the information was prepared, and the FOIA exemption cited (See sample language #20, and #21). This list, and a copy of the withheld documents, redacted and unredacted will be maintained with the FOIA case file for use in a possible appeal by the requester, and to ensure consistent treatment of the same documents by other requesters.

If a list is too burdensome, a copy of the first page of each document may be substituted.

## H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK

### Chapter 3 - Determining What is Exempt from Disclosure

#### E. The Nine FOIA Exemptions:

The following are the nine exemptions under the FOIA which serve as a basis for withholding information. The Department of Justice provides an annual Freedom of Information Act Guide & Privacy Act Overview explaining the provisions of the FOIA and the Privacy Act, an overview discussing the FOIA's exemptions, and new Court decisions which may influence the analysis for each exemption.

##### 1. Exemption 1 - Classified Secret Matters of National Defense or Foreign Policy (5 U.S.C.552(b)(1)):

This protects national security information provided that it has been properly classified in accordance with Executive Order No. 12356 (April 2, 1982).

This protects national security information provided that it has been properly classified in accordance with Executive Order No. 12356 (April 2, 1982). Therefore information may not be classified unless "its disclosure reasonably could be expected to cause damage to the national security."

5 U.S.C. 552(c)(3) is a special record exclusion under the FOIA which applies to certain especially sensitive records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence, counterintelligence or international terrorism matters. Agencies may treat the records as not subject to the requirements of the FOIA, and deny the existence of the information, since the existence of the record is itself a classified fact.

##### 2. Exemption 2 - Related Solely to the Internal Personnel Rules and Practices of an Agency (5 U.S.C. 552(b)(2)):

This (discretionary disclosure) exemption covers matters that are related solely to an agency's internal personnel rules and practices.

Recent court decisions have construed "personnel" to refer to a broader meaning than just personnel-related information. Also included would be a wide range of administrative information. In light of the Administration's new policy on, a rationale for harm if the information is released is now required in the analysis for exemption 2. Further discussion on providing sound grounds and identifying what harm would be caused if the information were released will follow at the end of this chapter.

There are two separate classes of documents that fall within Exemption 2.

- (1) First, "**Low 2**" covers information relating to personnel rules or internal agency practices is exempt if it is trivial administrative matter of no genuine public interest. A rule governing lunch hours for agency employees is an example. Because of the requirement that sound ground exist for withholding this kind of information, no information is generally withheld using the "low 2" exemption.
- (2) Second, "**High 2**", covers more substantial internal administrative matters disclosure of which would risk circumvention of the law or an agency regulation. Law enforcement proceedings, or crediting plans are examples.

##### a. The Test for Exemption 2 is the following:

- (1) The material withheld should fall within the terms of the statutory language as a personnel rule or internal practice of the agency;

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**Chapter 3 - Determining What is Exempt from Disclosure**

- (2) The material should relate to trivial administrative matters of no genuine public interest ("low 2")
- (3) The material would risk circumvention of lawful agency regulation ("high 2"); and
- (4) There should be a harm to Government operations or to the public if the information were released ("high" 2);

**3. Exemption 3 - Matters Specifically Exempted From Disclosure by Statute (5 U.S.C. 552(b)(3)):**

The intention of this exemption is to allow statutes which require or authorize the withholding of confidential information (and to which there was left no discretion on the issue) to remain unaffected by the disclosure mandate of the FOIA. The Privacy Act and the Trade Secrets Act are not Exemption 3 statutes.

**a. The Test for Exemption 3** is the following:

- (1) The statute must require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, and
- (2) The statute establishes particular criteria for withholding or refers to particular types of matters to be withheld. It would also have to be established that the records in question clearly fall within the legal description of the exempting statute.

**b. Examples of Exemption 3 Information:** At present statutes affecting BLM which prohibit release of specific information include the:

- (1) Indian Minerals Development Act of 1982, 25 U.S.C. 2103(c).
- (2) Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. 201(b)(3) and 208-1(b)-(e). et seq.;
- (3) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);
- (4) National Historic Preservation Act Amendments of 1980, 16 U.S.C. 470w-3; and
- (5) Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301.

**4. Exemption 4 - Trade Secrets and Confidential Business Information Obtained from a Person, and Privileged or Confidential (5 U.S.C. 552(b)(4)):**

The exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government, and the interests of the Government in receiving continued access to such data.



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### Chapter 3 - Determining What is Exempt from Disclosure

Notification to Submitter of Proprietary Information. The Trade Secrets Act, 18 U.S.C. 1950, makes it unlawful for agency employees to disclose proprietary information filed with an agency and provides penalties for unauthorized disclosure. Similarly, Executive Order (EO) 12600 (June 23, 1987) (see Appendix II), mandated submitter notification when an agency contemplates releasing arguably confidential commercial information that they believe is confidential. See the Department of Interior FOIA Handbook, 383 DM 15, Chapter 3, Illustration 13 for a sample letter on consultation with the submitter regarding commercial information; see Illustration 14 in the Department Handbook for sample language notifying the submitter of the Bureau's intent to release documents; and sample language in Illustration 15 of the Department Handbook on a response to the FOIA requester for release of information over the objection of the submitter of the information.

However, all information that is submitted to BLM must be reviewed by BLM personnel regardless of submitter identification as to confidentiality and a determination made as to its confidentiality before the information can be made available in a BLM information access center, or releasing it in regard to a FOIA request.

Another note: If the information is not "sensitive", i.e., it is published in the company's annual report or is available through the Securities and Exchange Commission, exemption 4 may not be invoked to protect it.

The information in question must fall under one of two categories to proceed further in an exemption 4 analysis. The information must first be either **trade secrets** and/or **commercial or financial information**. If the information is found to be in either of those two groups, then to withhold it must be determined to be **privileged or confidential**. The following explains how to make those determinations.

**Trade secrets** are considered to be: A secret, commercially valuable plan, formula, process or device that is issued for the making, preparing, compounding or processing of trade commodities that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

**Commercial or financial** is information which would relate to business or trade, in which the submitter has a commercial interest. This category of information also must be: (1) Obtained from a person (not generated by the Federal Government), and (2) Privileged or confidential. When determining confidentiality the Bureau must now establish first whether the information is provided because it is "required" for a certain benefit, or provided "voluntarily", because there is a different test for confidentiality for each category.

With regard to commercial or financial information that the submitter is required to provide, the test for confidentiality is determined by whether: (1) Release of the information would impair the Government's ability to obtain similar information in the future; or (2) release would cause substantial harm to the competitive position of the person from whom the information was obtained.

The test for confidentiality of voluntarily submitted information is determined by whether the information can be proven to be routinely treated by the submitter as confidential.

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### Chapter 3 - Determining What is Exempt from Disclosure

#### **a. Summary of Test for Exemption 4:**

- (1) Is the information a trade secret?
- (2) Is it commercial or financial
- (3) Was it obtained from a person (not generated by the Federal Government)?
- (4) Is the commercial or financial information required to be provided, or provided voluntarily?
- (5) If the commercial or financial information is required to be provided to the Government, there are two tests for determining confidentiality: (a) Will release impair the Government's ability to obtain necessary information in the future, or (b) will release cause substantial harm to the competitive position of the submitter?
- (6) If the commercial or financial information is voluntarily provided to the Government, is it customarily kept confidential.

#### **b. Examples of information withheld under exemption 4:**

- (1) Commercial and financial information received in connection with bids, contracts, or proposals, such as: Assets income, profits, losses, and expenditures.
- (2) Solid mineral information, including production data and royalty statistics.
- (3) Geophysical information - locations of oil and gas well, drilling plans, exploration data, geologic reports.

For more information see the listings in the Departmental FOIA Handbook at 383 DM 15, Section 5.4D(3).

#### **5. Exemption 5 - Inter-Agency or Intra-Agency Memorandums or Letters Which Would Not Be Available By Law to a Party Other Than an Agency in Litigation With the Agency (5 U.S.C. 552(b)(5)):**

The threshold issue for invoking exemption 5 is whether the document is intra- or inter-agency. Normally this requirement is met by documents generated within the agency. Documents generated by non-Federal sources, however, also may qualify as inter or intra-agency documents. For example, documents created by outside parties functioning as consultants to BLM also may meet this threshold requirement.

As with exemption 2 (low 2), the Department of Justice now requires that if the exemption is invoked, sound grounds for withholding the information must be provided if information is withheld using exemption 5. Further discussion on providing sound grounds and identifying what harm would be caused if the information were released will follow at the end of this chapter.

#### **The three primary PRIVILEGES incorporated in exemption 5 are the:**

- (1) Deliberative process privilege;
- (2) the attorney work-product privilege; and
- (3) the attorney-client privilege.

**The deliberative process privilege** is designed to protect the quality of the agency's decision-making process. The purposes of the exemption are:

- (1) Encouraging open, frank discussions on matters of policy between subordinates and superiors;
- (2) Protecting against premature disclosure of proposed policies before they are finally adopted; and
- (3) Protecting against public confusion that might result from disclosure of reasons that were not in fact ultimately the grounds for an agency's action.

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As with exemption 2 (low 2) a document may lose its deliberative status if it's contents are adopted without change, formally or informally, as the Bureau's position, and also released previously outside the Executive Branch. Reasonably segregable factual portions of pre-decisional documents should be released. The factual portion must be released where it can be segregated from the remainder of the document. However, if the manner of selecting or presenting those facts would reveal the deliberative process or if the facts are inextricably intertwined with the decision-making process, the facts may be withheld.

**a. A test for the deliberative privilege** is the following:

- (1) The communication must be pre-decisional (antecedent to the adoption of an agency policy); and
- (2) The communication must be deliberative (a direct part of the decision-making process, i.e. does it make recommendations or express opinions on legal or policy matters?).

**b. Examples of deliberative privilege documents** are a letter from one Government department to another about a joint decision that has not yet been made, or a memorandum from an agency employee to his supervisor describing options for conducting agency business.

The BLM documents that will fall in this category will generally be drafts, working papers, and handwritten notes.

#### **6. Exemption 6 - Protects personnel, medical and similar files (of individuals), disclosure of which would constitute a clearly unwarranted invasion of personal privacy.**

Personal privacy interests are protected by two provisions of the FOIA, exemptions 6 and 7(C). The application of 7(C) will be discussed later and is limited to information compiled for law enforcement purposes.

Exemption 6 permits the withholding of information about individuals contained in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy".

It important to note that, to qualify for protection under exemption 6, information must be identified to a specific individual. The exemption normally does not apply to businesses or organizations. However, certain information concerning employees such as their social security numbers, and home addresses, etc. would be withheld.

Further, exemption 6 cannot be invoked to withhold from a requester information pertaining only to himself.

Exemption 6 involves a balancing of interests between an individual's right to privacy and the public's right to Government information, and thus differs from other exemptions. Information will be withheld if an invasion of privacy outweighs a public interest recognized by the FOIA.

Court cases have established standards for viable privacy standards. These are some items to consider to determine privacy interest:

- (1) The threat to privacy must be real vs. speculative;
- (2) The individual had an expectation of privacy; and
- (3) Individuals not corporations or business associations possess protectable privacy interests.

(Note: Sole proprietorships are considered "individuals" and exemption 6 may be invoked to protect their privacy).

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The following are items to consider for public interest:

- (1) The burden of proof for public interest is on the FOIA requester;
- (2) The only public interest to be considered is whether the information sheds light on an agency's performance of its statutory duties. Therefore the information must benefit the public overall and not only the requester.

The Supreme Court decision, United States Department of Justice v. Reporters Committee for Freedom of the Press, provided 5 guiding principles that govern the process by which determinations are made under both Exemption 6 and 7(C). These are:

- (1) If the information were "freely available", there would be no reason to invoke the FOIA to obtain access to them;
- (2) The identity of the requesting party has no bearing on the merits of their FOIA request;
- (3) In determining public interest, the purposes for which the request for information is made is not considered;
- (4) The public interest inquiry is only whether the information sheds light on an agency's performance of its statutory duties.

If information is withheld using exemption 6, and the information is not covered by the Privacy Act, Department of Justice guidelines require sound grounds for withholding the information. (Refer to the information at the end of this chapter for further discussion on the requirement).

**a. A test for Exemption 6 is the following:**

- (1) Is the information contained in:
  - (a) personnel files;
  - (b) medical files; or
  - (c) similar files". (The courts have determined "similar files" to mean information which "applies to a particular individual").
- (2) Is a personal privacy interest threatened? The following should be considered:
  - (a) Information must be about a specific individual (vs a group).
  - (b) The information must be identifiable to the individual.
  - (c) Would disclosure be a "clearly unwarranted invasion of personal privacy"? Would there be a violation of a viable privacy interest?
  - (d) The threat to privacy must be real rather than speculative; and
  - (e) If there is a privacy interest, is it greater than the public interest?
- (3) What is the assessment of the public interest? The following should be considered:
  - (a) Does the information shed light on an agency's performance of its statutory duties? and
  - (b) Disclosure must benefit the public overall and not just the requester.

Once it has been determined that there is an actual privacy interest, it must be weighed against the public interest. Now it must be determined which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. If the public benefit is weaker than the threat to privacy, the latter will prevail.

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**b. Examples of Exemption 6 Privacy Protected Information:**

The kinds of information which have been protected by Exemption 6 are personal in nature, and may contain intimate details of an individual's life which are likely to cause distress or embarrassment. The following are examples of cases where exemption 6 may be invoked for certain information:

- (1) Portions of SF 171s of successful applicants or those currently occupying the position, that do not pertain to background skills and education relevant to the position would be withheld. Copies of 171s of unsuccessful applicants are not releasable;
- (2) Home addresses, personal phone numbers, age, and social security numbers are withholdable under exemption 6 (includes Government as well as non-Government employees);
- (3) Identities of those requesting their own information under the Privacy Act;
- (4) Identities of individuals writing the government expressing personal opinions, and
- (5) Lists of home addresses and home phone numbers of individuals and Government employees are withholdable under exemption 6. However, lists of companies doing business with the Government are releasable.
- (6) Other miscellaneous information that is exempted under exemption 6 are: Health insurance benefits, letters of reprimand, marital status, individuals who provide law enforcement agencies with reports of illegal conduct, allegations of misconduct, background investigations, credit card numbers, financial statement, personal misconduct, performance ratings, medical files, and payroll information.

**7. Exemption 7 - Investigatory records compiled for law enforcement purposes but only to the extent that production of such law enforcement records or information:**

- (A) Could reasonably be expected to interfere with enforcement proceedings;
- (B) Would deprive a person of a right to a fair trial or impartial adjudication;
- (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (D) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis...;
- (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
- (F) Could reasonably be expected to endanger the life or physical safety of any individual.

This exemption protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information meets certain specified criteria.

To withhold information, a foreseeable harm now must be identified. A harm statement is not required if the information is protected under (7)(C) to the extent that it is covered by the Privacy Act or under (7)(D) if it consists of identifying information provided by a source.

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#### **a. A Test for Exemption (7)(A):**

- (1) Was the information compiled for law enforcement purposes?
- (2) Is there a law enforcement proceeding pending or prospective; and
- (3) Would release of the information harm the Government case in court or impede any necessary investigation prior to the enforcement proceedings?

The law enforcement proceedings for which this exemption may apply can be criminal actions, civil actions, and regulatory proceedings as well.

Once Exemption (7)(A) applicability ceases with changed circumstances, and agency then may invoke other applicable exemptions.

#### **b. Examples of Exemption (7)(A) Information:**

- (1) Investigative files; and
- (2) Information which would reveal investigative trends, emphasis, and targeting schemes has been determined to be eligible for protection under this exemption.

The (c)(1) exclusion under the FOIA (5 U.S.C. 552(c)(1)), is a special record exclusion which applies to situations in which the very fact of a criminal investigation's existence is as yet unknown to the subject of the investigation, and disclosure of the existence of the investigation could be expected to interfere with enforcement proceedings. Whenever a request is made which involves access to records described under Exemption (7)(A) and the investigation or proceeding involves a possible violation of criminal law, the agency may treat the records as not subject to the requirements of this section.

#### **c. A Test for Exemption (7)(B):**

- (1) Was the record compiled for law enforcement purposes?;
- (2) Is a trial or adjudication pending or imminent?; and
- (3) Would disclosure of the material sought interfere with the fairness of those proceedings?

#### **d. Examples of Exemption (7)(B) Information:**

Exemption (7)(B) is not often applied. One court has ruled that exemption (7)(B) is properly applied where "disclosure through FOIA would furnish access to a document not available under the discovery rules and thus would confer an unfair advantage on one of the parties".

#### **e. A Test for Exemption (7)(C):**

This is the law enforcement counterpart to Exemption 6. Questions to ask are:

- (1) Were the records compiled for law enforcement purposes?;
- (2) Is there a threatened privacy invasion?;
- (3) Do the privacy interests outweigh the public interests in disclosure?

See the previous test for Exemption 6. (Note: If the information encompassed by exemption (7)(C) is not covered by the Privacy Act, the Bureau must determine whether sound grounds exist to withhold the information).

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**f. Examples of Exemption (7)(C) information that would be protected:**

- (1) References to persons who were of "investigatory interest" to a criminal law enforcement agency;
- (2) Names of individuals where disclosure may damage reputations or lead to personal embarrassment or discomfort; and
- (3) Identities of Federal, state, and local law enforcement personnel referenced in investigatory files, when release could subject them to harassment and annoyance in the conduct of their official duties, and in their private lives.

**g. Test for Exemption (7)(D):**

Exemption (7)(D) contains two clauses with different standards for withholding information which are:

- (1) Clause one: Records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished the agency information on a confidential basis.

The test for the applicability of clause one of exemption (7)(D) is:

- (a) Was the information compiled for law enforcement purposes? and
- (b) Was the information obtained under an express or implied promise of confidentiality?

- (2) Clause two: All information furnished to law enforcement authorities by confidential sources in the course of criminal or lawful National Security Investigations.

The test for the applicability of clause two of exemption (7)(D) is:

- (a) Was the information compiled in the course of a criminal or lawful National Security investigation? and
- (b) Was the information obtained under an express or implied promise of confidentiality?

**h. Examples of Exemption (7)(D) Information:**

- (1) For clause one of exemption (7)(D), all information that would identify a confidential source, including such obviously identifying information as the informants's name and address and all information that would tend to reveal the source's identity is withholdable.
- (2) For clause two of exemption (7)(D), all information provided by the confidential sources, even information that would not tend to identify the source is withholdable.

**I. A test for Exemption 7(E):**

- (1) Was the information compiled for law enforcement purposes?
- (2) Would release disclose techniques and procedures for law enforcement investigations or purposes? or
- (3) Would release disclose guidelines for investigations or prosecutions that could reasonably be expected to risk circumvention of law?

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**j. Examples of Exemption 7(E) Information:**

Law enforcement manuals, and law enforcement guidelines which correlate to a specific harm to law enforcement efforts. Specific techniques used in a particular case could reveal agency strategy in similar cases.

**k. A Test for Exemption 7(F):**

- (1) Was the information compiled for law enforcement purposes?
- (2) Could release reasonably be expected to endanger the life or physical safety of any individual (not just law enforcement personnel)?

Privacy interest vs public interest is **NOT** a consideration for this exemption as with 7(C).

**l. Examples of Exemption 7(F) Information:**

- (1) Names of special agents and law enforcement personnel (even after retirement);
- (2) Names, identifying data, and aliases of local undercover law enforcement officers;
- (3) Names mentioned in criminal investigation files or mental health reports;

**8. Exemption 8 - Covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions".**

This exemption is not normally applicable to BLM documents. Basically, the two major purposes underlying this exemption are: (1) "to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability"; and (2) "to promote cooperation and communication between employees and examiners".

Even if the information meets the legal requirements of the Exemption, an identification of a foreseeable harm is required in order to withhold the information under this information, as with the other discretionary disclosure exemptions cited in the beginning of this Chapter.

**9. Exemption 9 - Covers "geological and geophysical information and data, including maps, concerning wells."**

This exemption is rarely invoked by BLM. The exemption applies only to well information of a technical or scientific nature. The information in question may also be protected by Exemption 4.

Even if the information meets the legal requirements of the Exemption, an identification of a foreseeable harm is required in order to withhold the information under this information, as with the other discretionary disclosure exemptions cited in the beginning of this Chapter.

Some examples of documents withheld under Exemption 9 are: Number, locations, and depths of proposed drill sites.



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**Statement of Sound Grounds for Withholding**

**A statement of "sound grounds" in withholding information is required for each document (or portion of document) being withheld for FOIA exemptions requiring a sound grounds statement.**

The attached harm statements identify the document(s) (or withholdable portions of documents) being withheld. It is determined that sound grounds exist for withholding the document(s) as identified, and under the exemption(s) indicated.

1. Letter from the District Office to the State Director dated April 16, 1992, providing input on a proposed policy for oil shale mining is being withheld under FOIA Exemption 5 as pre-decisional and deliberative. A final decision has not been made, and release of the information may inhibit frank discussions on matters of policy between subordinates and superiors.
2. Record of phone conversation dated May 6, 1992, between the Washington Office and the State Director who is providing advice to Washington on proposed mining policy. Exempt under FOIA Exemption 5 as pre-decisional and deliberative. Release of this information would harm the quality of agency policy since a final decision on policy has not been made.
3. Law enforcement manuals requested are being withheld under Exemption 2 (high 2), which concerns substantial internal matters, the disclosure of which would risk circumvention of a legal requirement. Release of this information would risk the circumvention of a law or agency regulation.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

Headquarters or State FOIA Officer or Coordinator

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Bureau)

The Solicitor's Office was consulted concerning withholding of this information. The attorney consulted is

\_\_\_\_\_.  
**Note: The information on sound grounds should be maintained with the FOIA case file for reference if a FOIA Appeal is filed with the Department. This information is not shared with the requester.**

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**Chapter 4 - Processing Initial Freedom of Information Act Requests**

**PROCESSING INITIAL FREEDOM OF INFORMATION ACT REQUESTS**

**A. Introduction.**

All FOIA requests should be coordinated with Bureau FOIA Coordinators. The questions in the checklist (refer to Illustration 1 of this Chapter), are to assist in preparing a FOIA request. Any questions on overall Bureau FOIA policy should be directed to the Bureau FOIA Officer, Washington Officer (WO), IRM Liaison Team.

The Washington Office, Directives Team provides support for responding to WO FOIA correspondence. The State/District/Center FOIA Coordinators will assist the program staffs in their respective offices. The following are steps for processing a FOIA request based on Department regulations, and Bureau policy:

**B. Steps in Processing a FOIA Request.**

1. when a BLM employee other than the FOIA Coordinator receives a FOIA request, or receives a request for information that is covered by one of the 9 FOIA exemptions, they should immediately contact the office FOIA Coordinator to assist in processing the request according to regulations, and to ensure the information is provided for the Annual Report to Congress.
2. The FOIA Coordinator's staff will date stamp, log-in and track the request.
3. The FOIA Coordinator will assign a control number, request necessary records and information from program offices. The FOIA request is hand carried to the program office responsible for action.
4. When records are not located in the WO, the WO FOIA Coordinator will transfer the FOIA request to the appropriate field installation or Federal agency. See sample language #4, 5, 6, or 7 (whichever apply). Due dates will begin to be counted from the date that the request is received by the appropriate BLM facility.
5. When responsive records to a FOIA request reside in more than one Bureau state/Center/WO, the WO FOIA Coordinator will be the contact point to coordinate a FOIA response for the Bureau offices involved in providing information.
6. The program office responsible for the documents requested provides the documents responsive to the FOIA request and other FOIA processing information requested to the FOIA Coordinator by expeditious handling.
7. The program office responsible for action provides within the time frame requested, information on fees incurred for processing the FOIA request, recommendations on fee waivers, and recommendations on FOIA exemptions that may apply to the responsive information.
8. The program office will review documents responsive to the request for releasability. When a decision has been made to withhold documents under a "discretionary disclosure" exemption, they will provide statements identifying what harm there would be if documents were released. The FOIA Coordinator will review questionable documents or those proposed to be withheld, and coordinate any responses withholding documents with the office's designated FOIA attorney (see Chapter 6, Section C, and sample language #21 for further information on discretionary disclosure and "harm statements"). Any questions involving Bureau FOIA policy on withholding information can also be directed to the Bureau FOIA Officer, WO, IRM Liaison Team.

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9. The action office should provide a copy of the documents being released to the requester, and a set of copies for the FOIA Case File. Copies of withheld documents (without deletions) also should be provided for the FOIA Case File which is maintained by the FOIA Coordinator. Exemptions used should be indicated in the margins of the documents where information is deleted. Copies of "harm statements" and affidavits should be filed in the FOIA Case File (see Chapter 3 of this Handbook).

10. The WO FOIA coordinator will prepare the final response for the WO, which will be signed by a designated denying official or Bureau FOIA Officer.

11. Responses prepared in BLM facilities other than the WO, will be signed by authorities designated in Manual Section 1203.

**C. Basic Elements of a FOIA Response Letter.**

The following is information which should be included when applicable, in drafting a response to a FOIA request:

1. Date of letter; to whom letter is addressed (i.e., BLM Director or Secretary of the Interior); when received; and subject of the letter.
2. Identify if record will be released, and whether it is released in whole or part.
3. Cite FOIA exemption(s) if information is being withheld.
4. Identify the foreseeable harm for releasing information that falls under a discretionary disclosure exemption.
5. If information could legally be withheld under a discretionary disclosure exemption, but is being released because there is no foreseeable harm, let the requester know this.
6. When and where records can be made available if the requester desires to view records before copies are made.
7. Notification of charges, or fee waiver determination.
8. Let the requester know if the Bureau has decided to release information which falls under a discretionary disclosure exemption, for which there would be not harm in releasing the information.
9. Advise the requester of his/her right to appeal when records are denied, do not exist, or cannot be located. The notification of right to appeal is also required for a fee waiver denial.
11. Provide the name and title of persons responsible for denial.
12. Provide the name and phone number of contact person.

**D. Suggested FOIA Record Keeping.**

All FOIA records should be set up separately and set apart from all other correspondence. Refer to Departmental Manual 383 DM 15, Chapter 2 for maintenance of FOIA, and Privacy Act files.

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FOIA files which are retrievable by a personal identifier such as an individual's name constitute a system of records under the Privacy Act. Refer to Departmental Manual 383 DM 1 - 13 for the handling of Privacy Act System of Records, and also BLM Manual Section 1278.07, .82, .83, and .84. See also, Privacy Act Systems notice OS-71, FOIA Request Files System, and OS-69, FOIA Appeal Files.

Each FOIA request should be put into a separate file folder. This is the official file and should contain the following at minimum:

1. The original request letter;
2. The file copy of the response, including a list of all records that were provided to the requester;
3. Any other records concerning the status of the request; follow up correspondence with the requester; or phone conversations, E-Mail, or FAXes that were sent and received;
4. Any interagency communications regarding the request;
5. Copies of the documents being withheld (if too numerous then just a copy of the first page). If portions of documents are withheld the full version marking sections withheld, and exemptions used should be filed in the folder;
6. A copy of the statements identifying sound grounds for withholding information, and affidavits of the Solicitor's review when FOIA discretionary disclosure exemptions are used; and
7. A copy of any appeal filed, and the Department's determination of the appeal.

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CHECKLIST FOR PREPARING A FOIA RESPONSE

1. Was the request made in writing, and did it cite the Act?

Technically it would not be considered a FOIA request. However, even though the Act is not cited, it may be treated as a FOIA if the records requested are considered non-public because a FOIA exemption may apply.

2. Did the request reasonably describe the records requested?

If not, the requester should be contacted to clarify what documents he specifically wants.

3. Did the request specify the fee category and identify how much they are willing to pay?

If the fee category (43 CFR 2.20) is not obvious, and the maximum amount the requester will pay in fees is not provided, contact the requester for this information.

4. Is there a need to clarify whether a fee waiver is justified?

If so, the requester should state in writing how he qualifies for a fee waiver in connection with the particular request. Refer to (43 CFR 2.21(a)) for conditions for justification of a fee waiver.

5. Does the FOIA requester desire a record that is not in existence at the date of the request?

A Federal agency is not required by the FOIA to do research for a requester, to compile or analyze data, or to answer questions. Minor reprogramming of computer programs may be advisable, when the reprogramming is not burdensome or extremely costly to the Bureau.

An agency has the right to choose the format of disclosure where the choice is reasonable under the circumstances. Department regulations provide that where the agency determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the agency may, in its discretion, agree to creation of a new record as an alternate to disclosing existing records.

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6. **Can a response be made within 10-working days as required by law?**

Prepare a letter requesting a 10-day extension, if because of circumstances identified in the 43 CFR, the first 10-day due date can't be met (43 CFR 2.17(c)).

7. **Are there any documents which may contain confidential or sensitive information?**

Identify exempt documents (or portions of documents) according to FOIA statutory exemptions listed in 5 USC 552(b), and provide harm statements when necessary. The response must include information on how the FOIA requester may appeal the denial of any documents withheld under a FOIA exemption. (43 CFR 2.18)

Before making a final determination and response denying a fee waiver or withholding a record, consult with the office's designated FOIA attorney.

8. **Is any of the responsive information provided by a business, associations, or Indian tribes, which may contain confidential commercial or financial information?**

The submitter of that information must be notified that the information may be released. The submitter of those documents has 10 days to review the documents in question and provide sufficient reason why the information is confidential, and should be withheld. See Executive Order 12600 and 43 CFR 2.15(d).

9. **Were any responsive documents originated by another Federal agency?**

Forward a copy of the Bureau's FOIA response, together with the documents which originated from the other agency, to the other Federal agency for review. That agency will be instructed to provide a direct response to the requester, and the requester will be notified of this action in the Bureau's response (See 43 CFR 2.15(b)).

10. **If the FOIA response is not completed within 20 working days (which includes the 10-day extension).**

Prepare a letter of delay, identifying the FOIA requester of their right to file an appeal, and provide appeal language. (Refer to Chapter 3 of this Handbook, and 43 CFR 2.17(3)(f))

**H-1278-1 - BLM HANDBOOK ON ADMINISTRATION OF FOIA**  
**Chapter 5 - Computing Fees**

**CHAPTER 5 - COMPUTING FEES**

**A. Introduction.**

Under the FOIA, an agency is permitted to charge certain fees for processing FOIA requests, which will vary depending on which FOIA fee category the requester falls under. Fees can be recovered only for the actual costs associated with providing access to BLM records (43 USC 1460).

The FOIA request should include a willingness to pay fees, and, if a fee waiver is sought, the requester must provide adequate justification (see 43 CFR 2.21 and Manual Section 1278.36). If the above is not provided in the incoming FOIA, the FOIA coordinator should notify the requester of the estimated fees, and suspend action on the FOIA until clarification has been made (See sample language #3.). The FOIA Coordinator should also give the requester an opportunity to modify his/her request at that time to reduce the fee, and note it in the response letter.

DOI does not charge the requester if the fees are \$15 or less, as the cost of the collection would be greater than the fee. Unless waived, fees for responding to FOIA requests will be charged in accordance with the provisions of 43 CFR 2.20 and 43 CFR Part 2, Appendix A. The Office of Management and Budget issued uniform FOIA fee schedules and guidelines in the March 27, 1987 Federal Register Notice Vol. 52, No. 59. See Appendix III for a copy of the OMB Federal Register Notice.

Documents required to be made public under 5 U.S.C. 552(a)(1) and (a)(2) do not require a FOIA request (i.e. rulemaking that affects the public, organizational information, and statements of policy). Also refer to 43 CFR Part 2, Subpart A. Fees for these documents are covered by normal BLM cost recovery. Refer to Manual Section 1270-3, Cost Recovery for established BLM cost recovery rates and charges. Refer to Illustration 2 for a list of allowable FOIA fee charges.

Even though charges may be waived or reduced according to OMB and DOI guidelines, an accounting of actual costs is necessary for the FOIA Annual Report. See Illustration 1 of Chapter 2 for a sample log which can be retained in the FOIA file and used to compile the Annual Report information.

**B. Aggregating Fees For Multiple FOIA Requests.**

Since fees under \$15 are not charged according to DOI fee guidance (see sample language #16), there are instances when a FOIA requester may file a number of FOIA requests which may fall under this threshold in an attempt to avoid

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paying fees. OMB guidelines in Federal Register Notice dated March 27, 1987, Vol. 52, No. 59 (see Appendix III), and recent court cases (Edward P. Atkin v. Equal Employment Opportunity Commission, Civil Action No. 91-2108, U.S. District Court for the District of New Jersey, Dec., 27, 1992) provide the following guidance to determine whether FOIA requests should be aggregated in light of fee charges:

1. It is reasonable to presume that multiple requests for documents related by subject that could reasonably have been the subject of a single request and which occur within a 30-day period are made to avoid paying fees;

2. The requests concerning the same subject may have been made from different requesters. However, there must be a concrete basis that multiple requesters are colluding to avoid paying FOIA fees.

Notify the requester that further requests would be aggregated, and charges assessed based on the aggregated requests. Refer to sample language #28 for language regarding aggregating fees.

### C. Considerations in Assessing Fees.

There are a number of things which affect the amount of fees charged in response to a FOIA request. Some of these are the fee category the FOIA requester falls under and allowable charges for that category; or whether the requester qualifies for a fee waiver. The following sections will explain this further.

### D. Determining Requester's Category.

If a request is processed under the FOIA, one of the first steps in processing the request is to identify which of the four FOIA fee category the requester qualifies (see 43 CFR 2.20). If the category is not clear at the receipt of the FOIA, the FOIA coordinator should notify the requester that more information is needed to make a determination.

When it seems likely that a FOIA requester has sent similar requests to more than one Bureau office, FOIA Coordinators should contact other BLM Coordinators regarding the determination made by the other offices on the requester's fee category to ensure that consistent charges are made of the requester for similar information. (In some cases a Bureau-wide program may be the subject of the FOIA, or it copies to other Bureau offices may be indicated in the incoming).

In cases where FOIA requesters request consideration as non-commercial requesters, the FOIA Coordinator should use discretion in researching the accuracy of this category (for example, checking whether the requester has a tax exempt number, or checking with other FOIA coordinators). As with the above the FOIA Coordinator should use discretion in researching whether an individual is actually representing the group they claim to be involved with for purposes of fee waivers, or requesters categories.



**E. FOIA Fee Categories.**

The following are the FOIA fee categories identified in the FOIA. Refer to 43 CFR 2.20 for more detailed definitions, and the Department of Justice FOIA guide for explanations:

1. **Commercial Use Request:** Request from or on behalf of a person who seeks information for "a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is being made".
2. **a. Educational Request:** The requester should be officially a member of the institution, and its purpose should be scholarly.
- b. Non-Commercial Scientific Institution Request:** A requester seeking records under the auspices of an educational institution is to be used in furtherance of scholarly research.
3. **Non-Commercial News Media Request:** This refers to any person actively gathering information of current interest to the public for an organization that is organized and operated to publish or broadcast news to the general public. Excluded from this definition are: Private libraries, private repositories of Government records, or information vendors or data brokers who request use by others. Freelance journalists may be included where they can demonstrate a solid basis for expecting the information disclosed to be published by a news organization.
4. **Other Requesters:** This category applies to all requesters who do not fall within the preceding fee categories.

**F. Allowable Fee Charges:**

The following chart indicates the fee payments based upon the requester's category. The three cost components are search time, review time, and duplication.

1. **Search Time:** Refers to the time it takes to reasonably look for responsive material, including a page-by-page, or line-by-line identification of material within documents, whether documents responsive to the request are located or not. In regard to databases, search time refers to the use of computer time to locate and extract requested records.
2. **Review Time:** Refers to the time it takes to examine a document for the purposes of determining whether all or what portions of the document can be disclosed under the FOIA. It does not include the time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing on appeal exemptions already applied.

Fees for review time may only be assessed on commercial requests. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester.

3. **Duplication Fees:** Refer to the chart in Illustration 2 of this Chapter.

**G. Applicable Fees by Category.**

Refer to Illustration 1 of this Chapter, which is a chart to aid in assessing fees.

**H. Schedule of DOI Fees.**

Refer to Illustration 2 to identify allowable rates.

**I. Computerized Records.**

Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with criteria listed in the Department's FOIA Handbook at 383 DM 15, Chapter 4, 43 CFR Part 2, Appendix A, or BLM Cost Recovery Manual if neither of the previous apply.

**J. Collection of FOIA Fees:**

The bill for collection form (Form 1371-22) should be used by BLM offices for billing for collection of fees. See Illustration 3 for sample language. State, District and Resource Area offices will recover costs themselves, and retaining all fees recovered from providing access to records in BLM's copy fee account (5700). The Washington Office will direct billing to:

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

**K. Delinquent Payment:**

The FOIA Coordinator should develop a method to follow up on whether a FOIA requester has actually paid fees charged for information provided, and note it in the FOIA Case File. The FOIA requester can be contacted by telephone or letter to determine whether the original FOIA response was received, and that there are outstanding payments due.

Other BLM FOIA Coordinators should be notified of grossly delinquent payments. Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the Bureau may require payment of the full amount owed before that office or other Bureau offices begin processing the new request. If a request has an outstanding balance, BLM shall in most cases deny responding to future requests. Refer to language in Sample 15 of Appendix 1.

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Chapter 5 - Computing Fees

Chart Showing Applicable Fees by Category For FOIA Requests

REQUESTER'S CATEGORY	SEARCH	REVIEW	DUPLICATION
Commercial	Actual direct costs	Actual direct costs	Actual direct costs
Non-commercial (educational or scientific institution or news media)	No Charge	No charge	Actual direct costs <u>1/</u>
All others	Actual direct costs <u>2/</u>	No charge	Actual direct costs <u>1/</u>

1/ First 100 pages of paper copies or reasonable equivalent, such as a microfiche containing the equivalent of 100 pages, are copied free.

2/ First 2 hours of manual search time are free. If requested records are maintained in a computerized database, BLM will use the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for computer search time: The operator's hourly salary plus 16 percent will be added to the hourly cost of operating the central processing unit that contains the record information.

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Chapter 5 - Computing Fees  
Chart Showing Fee Costs for FOIA Requests

SERVICE	RATE
Employee Time: Clerical Professional	\$2.30 per 1/4 hr. \$4.65 per 1/4 hr.
Photocopying: (Up to 8 1/2" X 14")	\$ .13 per page
Photocopying: (Over 8 1/2" X 14")	Actual Direct Cost or Reproduction <u>2/</u>
Computer Costs	Actual Direct Cost * (See 383 DM 15.4, 43 CFR Pt.2 Appendix A, or BLM Manual 1270-3 - Cost Recovery) <u>1/</u> <u>2/</u>
Certification	\$ .25 per certificate
Supplies and Other Materials	Actual Direct Cost (See *) <u>2/</u>
Documents Requiring Special Handling	Actual Direct Cost (See *) <u>2/</u>
Other Than First-Class Postage	Mailing Charges are Added for Special Mailing

1/ Requesters entitled to the first 2 hours of manual search time for free, when records are maintained in a computerized database, BLM will use the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for computer search time: The operator's hourly salary plus 16 percent will be added to the hourly cost of operating the central processing unit that contains the record information.

2/ Requesters entitled to the first 100 pages of copies free, will not be charged for the equivalent of 100 pages at \$ .13/page or \$13.00.

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**H-1278-1 - BLM HANDBOOK ON ADMINISTRATION OF FOIA**  
**Chapter 6 - Fee Waivers**

**A. Introduction.**

The FOIA Coordinator will provide guidance to management in making a fee waiver determination according to the analysis provided by the Department of Justice below. (Also see 43 CFR 2.21 (a), and DOI FOIA Handbook, 383 DM 15, Section 4.10)

Each analysis must be done on a case-by-case basis, regardless of whether a FOIA requester has requested a fee waiver in the past, or similar information was provided without a fee waiver. Other circumstances such as the type of records requested, or the category of the requester is identified may affect the outcome of an analysis.

It is important that the Bureau be consistent in its analysis for fee waivers from one office to another to avoid being arbitrary.

If more information concerning justification of a fee waiver is required, the FOIA Coordinator should contact the FOIA requester as soon as possible to request further information. BLM will not start processing the request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment.

**B. Fee Waiver Standards.** In 1987 the FOIA Reform Act established new fee waiver guidelines setting forth specific criteria, for Federal agencies to apply in determining whether the public interest warranted a waiver or reduction of fees.

In order to determine whether the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of Government operations or activities, agencies should consider the following four standards:

1. The subject matter must specifically concern identifiable "operations or activities of the Government";
2. The disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request.

Courts have held that requests for information already in the public domain, either in a duplicative or a substantially identical form, may not warrant a fee waiver when the disclosure would not be likely to contribute to an understanding of Government operations or activities when nothing new would be added to the existing public record;

3. The disclosure must contribute to the understanding of the public at large as opposed to the individual requester, or a narrow segment of interested persons; and

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4. Disclosure must contribute **significantly** to public understanding of Government's operations or activities. The level of public understanding must be likely to be enhanced by the disclosure to a significant extent.

Please note that such a determination must be an objective one. Agencies are not permitted to make separate value judgments as to whether any information that would in fact contribute significantly to public understanding of Government operations or activities is important enough to be made public.

Once the "public interest" requirement for a fee waiver has been met above. The following should be considered:

1. The Bureau must determine whether the request involves any commercial interest of the requester which would be furthered by disclosure. A commercial interest would further a commercial, trade or profit interest as those terms are commonly understood; and

2. The Bureau must then balance the requester's commercial interest against the identified public interest in disclosure and determine which interest is "primary".

It is important to note that the burden is on the requester to show that he/she meets all the criteria for a fee waiver. The BLM, however, should give the requester the opportunity to show how he/she qualifies for a fee waiver if the requester has not made a sufficient showing in the initial request.

#### **C. Fee Waiver and Public Information.**

If a requester asks for a fee waiver, which is information routinely accessible to the public in public rooms, or provided to the public at a BLM office, BLM must process these fee waiver requests using the same principles discussed in Parts A and B. In other words, these requests must be decided and reviewed on a case-by-case basis; the mere fact that the documents are available for inspection in a public room is not sufficient basis, standing alone, to deny a fee waiver.

To give FOIA coordinators an idea of how courts and the Department have decided appeals involving denials of fee waivers for public room documents, following is a discussion of some of the cases decided in 1993 to 1995.

1. The Oregon District Court, in a decision issued April 22, 1994, ruled that a non-profit, public interest organization had failed to show that it satisfied the Department's criteria for granting a fee waiver in connection with the group's request for all of the BLM's active right-of-way files kept by BLM offices in Oregon, a request which totaled approximately 315,000 pages of documents. All of the documents were kept in BLM public rooms. The court ruled that in order to obtain a fee waiver for such a broad category of documents, a group must "specifically identify a public interest not already sufficiently served or capable of accomplishment under the status quo." The court ruled that, for purposes of showing entitlement to a fee waiver, it is

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not sufficient that a group has an interest in various environmental issues. Oregon Natural Resources Council v. Bureau of Land Management, No. 92-6425-TC (D.Ore. April 22, 1994). The court remanded the case to the BLM to allow the group another opportunity to show it was entitled to a fee waiver for the records at issue in the lawsuit. BLM once again denied a fee waiver request. The Department, in a decision issued in April 1995, upheld the denial after concluding that the group had failed to submit sufficiently specific information

to show it was entitled a fee waiver. Interior FOIA Appeal No. 94-199.

2. In a decision issued June 6, 1995, the Department determined that a public interest group in Colorado did not qualify for a fee waiver in connection with a request for documents kept in a BLM public room because the BLM had already given the group free copies of information containing the information sought. The fact that the BLM kept the documents available in a public room and had disseminated free copies of the information to persons on its mailing list, including the requester, justified BLM's denial of the request. Interior FOIA Appeal No. 93-160

3. In a series of decisions issued in April and May 1995, the Department concluded that while a public interest group had failed to show its entitlement to a fee waiver at the request level, the group demonstrated on appeal that it met the Department's criteria for granting a fee waiver even though the records, all of which pertained to grazing issues, were kept in a BLM public room. On appeal, the group submitted documents to show it had the ability and intention to disseminate the requested information, which totaled less than 2,000 pages of information per request, to the general public, thus satisfying its burden of showing disclosure would contribute to the understanding of the public at large. BLM further confirmed that, with the exception of making the documents available in its public rooms, it had not publicly disseminated the requested documents. The Department therefore concluded that disclosure of the information was likely to contribute significantly to public understanding of the BLM's grazing program. Interior FOIA Appeal Nos. 93-252, 94-223, and 95-008.

The pattern that emerges from these recent decisions is that the fact that BLM maintains requested documents in its public rooms is an insufficient basis, standing alone, for determining that release of documents will not contribute significantly to public understanding. Therefore, a fee waiver request may not be denied solely on the basis that the documents are available in a public room. On the other hand, the requester must show that he/she meets the criteria for receiving a fee waiver, i.e. that disclosure is in the public interest and not primarily to serve the requester's commercial interest. As the Oregon District Court ruled, the fact that a group is non-profit and operates in the public interest is insufficient, standing alone, to demonstrate the group's entitlement to a fee waiver. Further, if the BLM, in addition to maintaining information in a public room, has disseminated the requested information via other means, such as to persons on a mailing list or to libraries, then the fee waiver likely may be denied on the grounds that

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disclosure of free copies of the documents will not be likely to significantly contribute to public understanding of BLM's operations and activities.

#### **D. Fee Waiver and Information Available under 5 U.S.C. 552(a)(1) or (a)(2).**

Information listed in the Act (see also 43 CFR Part 2, Subpart A) under these cites are not covered under the FOIA, and therefore are subject to standard cost recovery, not FOIA fee rates, and fee waiver provisions. Such information would be charged according to BLM cost recovery procedures.

The following are some examples of information which are covered by this

portion of the Act:

1. Substantive rule of general applicability adopted as authorized by law;
2. Statements of general policy; and
3. Administrative staff manuals and instructions to staff that affect a member of the public.



**H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK  
CHAPTER 7 - FOIA APPEAL PROCESS**

**A. Introduction.**

Under the Department's regulations (43 CFR 2.18), requesters must file an administrative appeal with the Department when:

1. Records have been withheld either partially or entirely when a FOIA exemption applies (see sample language #20 and 21 in the Appendix of this Handbook);

2. A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located (See sample language #19);

3. A fee waiver request has been denied (see sample language #29) ; or

4. A decision on a request has not been communicated to the requester within the prescribed time limits (see sample language #9).

The initial denial letter must provide the requester with the proper procedures for filing a FOIA appeal according to 43 CFR 2.18 (see address change identified in sample language).

**B. FOIA Appeal Process.**

The Department of the Interior FOIA Appeals Officer will receive FOIA appeals from the FOIA requester, distribute copies of appeals to the Division of General Law, SOL-GL, for legal review and preparation of a legal opinion and recommendation (when information is being denied, or a fee waiver is denied); to the BLM FOIA Officer; and other appropriate offices in the Department. The BLM FOIA Officer or Coordinator will provide copies of the appeal to the appropriate BLM State Offices or field facilities.

The FOIA Appeal Officer may contact the Bureau FOIA Officer for additional information regarding the appeal, for copies of the documents withheld, for documentation of reasonable search of records, and explanations of fee waiver denial decision. If a statement of harm was not provided during the initial response process, then a request for such information may be requested for information withheld using a exemption requiring a sound grounds statement. The Bureau FOIA Officer or Coordinator will contact appropriate Bureau offices for requested information.

General Law will then review the information and provide a legal opinion to the Department's FOIA Appeals Officer. The Department then makes a final decision on the appeal.

A copy of the opinion and decision letter will be provided to the BLM FOIA Officer and the FOIA Officer or Coordinator will provide a copy to the appropriate BLM office.

In the final decision, the Department may instruct BLM to take action, such as releasing information originally withheld.

If the requester does not agree with the Department's decision, then the requester may file a lawsuit in Federal District Court. The United States Attorney's Office or the civil litigation staff at the Department of Justice will be assigned to represent the Department.

The decisions made by the Department and judges in court cases help to clarify FOIA requirements. For an annual summary of FOIA case law refer to The Department of Justice FOIA and Privacy Act Overview.

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APPENDIX 1

Sample Language Index

1. Clarification of a vague request
2. Clarification of an overly broad request
3. Fee waiver clarification
4. Request was transferred to another BLM facility
5. Request was transferred to another Interior Agency, or Government Department
6. Memo referring a FOIA to another BLM facility, or Government Agency
7. Referring records to another agency for review
8. Extension of a 10-day time limit
9. Delay in processing request
10. Disposition of a FOIA response
11. Request is being treated as a FOIA request
12. Another Government agency should not file a FOIA request
13. Sample language to requester to pay fees (When under \$250)
14. Sample language requesting advance payment (When payment was previously late)
15. Fees under \$15, and no payment is required
16. Costs exceed \$250 and prepayment is required
17. Reply to questions and creating new records

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APPENDIX 1

18. No record response (No records can be located)
19. Withholding records under a FOIA exemption when no harm statement applies
20. Sample language denying a fee waiver
21. Sample language to subject of a request for Privacy Act protected records
22. Sample language to a requester for Privacy Act protected records of another person
23. Multiple FOIAs are being aggregated and fees will be charged
24. Release of a database including a disclaimer statement
25. Withdrawal of a FOIA appeal

**Sample 1**  
Sample Language Requesting Clarification Of A  
Vague Request

Under Departmental regulations, 43 CFR 2.14(b)(2), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request is too general in nature and this office is unable to identify what specific information you are seeking for a reasonable search as the regulation indicates.

Please be more specific concerning the records you are requesting. In addition, if such information is available, please state **(use applicable language)** the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and time frame for which you are seeking records have not been defined. It is unclear whether your request covers only records in this field installation or other Bureau offices.

Please contact the person below if you need more information on how this offices record system is organized, and what records we have which may help you. We will not proceed further with your request until we receive additional clarification from you. If you have any questions, please contact (name, FAX number & telephone number).

## Sample 2

### Sample Language Requesting Clarification of an Overly Broad Request

We have interpreted your request to mean ..... Because of the broad nature of the description of requested information possibly thousands of pages of documents might be applicable to your request. Below is an estimate of the costs of providing you with this information.

You may wish to contact this office's FOIA Coordinator at (phone number) to discuss what categories of information are covered by the subject of your FOIA in order to narrow your request, and reduce the estimated costs in reviewing and copying the above files for the responsive information. We will not proceed further with your request until we receive additional clarification from you.

### Sample 3

#### Sample Language Requesting Fee Waiver Clarification

In your letter you also sought a fee waiver, however your request did not provide enough information to make a determination on whether your request meets the twofold objectives for fee waivers established by the Department of Justice. Before we can make a decision on granting a fee waiver the following must be determined: Whether disclosure of the information is in the public interest because it (1) is likely to contribute significantly to public understanding of the operations or activities of the Government; and (2) is not primarily in the commercial interest of the requester (43 CFR 2.21(a)).

Please provide information in response to the following questions so that we can determine if granting the waiver or a reduction in fees is in the public interest: (1) In what way does the record requested concern the operations or activities of the Government?; (2) Is disclosure likely to contribute to public understanding of these operations and activities, and in what way do you have the knowledge and ability to disseminate the information to the public effectively?; and (3) Is there a commercial interest that would be furthered if the information were disclosed?

Our initial estimate is that fees for processing your request will be the following:

Total		
<u>No. of Units</u>	<u>Unit Charges</u>	<u>Amount</u>
Document Search Time:		
Clerical	40 hrs.@ \$ 2.30 1/4 hr.	\$640.00
Professional or		
Managerial	20 hrs.@ \$4.65 1/4 hr.	186.00
Duplication:	600 pages @ \$ .13/page	65.00
	Total:	<u>\$891.00</u>

If we determine from your response that a fee waiver is not justifiable, we will base your costs on your classifying as "other" FOIA fee category. We will continue processing your request when you have responded to the questions above. If you have any questions, please contact (name, FAX number & telephone number).

**Sample 4**

Sample Language Notifying The FOIA Requester  
That The Request Was Sent To Another BLM Facility

This office has reviewed its files and we are unable to locate any records responsive to your request.

The Bureau of Land Management has a decentralized FOIA program which means that each Bureau installation is responsible for responding to FOIA requests for documents under its control. Therefore, in accordance with the Department of the Interior regulations (43 CFR 2.15(a)) we are transferring your request to the \_\_\_\_\_ State Office at the address below for direct reply to you.

If you have any questions please contact \_\_\_\_\_ at (phone number and FAX number).

-----



**Sample 5**

Sample Language Notifying the FOIA Requester  
That the Request Was Sent to Another Interior Agency,  
or other Government Department

This office has reviewed its files and we are unable to locate any records responsive to your request.

We have determined that the records described in your letter may be located at the Forest Service of the Department of Agriculture. Therefore, we have forwarded your request to that Agency, which will provide you with a direct response. If you wish to contact the Bureau, the mailing address is:

(Name)  
FOIA Coordinator  
Rocky Mountain Region  
11177 W. 8th Avenue  
Lakewood, Colorado 80775  
(Phone Number)

Should you have any further questions please contact me at (phone number and FAX number).

**Sample 6**

Sample Memo Referring A FOIA  
To Another BLM Facility or Government Agency

Memorandum

To: [BLM State FOIA Coordinator, or Government Agency]

From: [BLM FOIA Coordinator]

Subject: Transfer of Freedom of Information Act Request from (name)

Enclosed is a Freedom of Information Act request from (name) dated (date) who is requesting information which appears to be under the control of (name of BLM facility). This FOIA request is being transferred to your office for direct reply to the FOIA requester. We have contacted (FOIA requester) that they will receive a response directly from your office.

If you have any questions, please contact (name, FAX number & telephone number).

Enclosure

**Sample 7**

Sample Language Referring Records To Another Agency For Review

(Name)  
FOIA Coordinator  
Office of Surface Mining  
Rm 130 South Interior Building  
Washington, D.C. 20240

Dear (Name):

While processing a Freedom of Information Act (FOIA) request from (name), dated (date) the Bureau of Land Management located three documents that originated in your agency. The three documents are: [Describe documents or list on a separate enclosure].

Enclosed are copies of those documents. We have advised (name) that they will receive a direct response from your office. If you have any questions, please contact (name, FAX number & telephone number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer

Enclosures

Sample 8

Sample Language For Extension Of 10-Day Time Limit

ADDRESS

Dear (Name) :

This is in response to your Freedom of Information Act (FOIA) request dated September 1, 1993 addressed to \_\_\_\_\_. You requested documents concerning mining activities in certain states.

**(USE THE FOLLOWING LANGUAGE FOR THE CIRCUMSTANCE THAT APPLIES):**

- I. "Since we must search for and collect documents from offices other than the office processing the request, we are taking a 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(1))."
- II. "Since we must search for and collect voluminous documents, we are taking a 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(2))."
- III. "Since we must coordinate and consult with our Field Office personnel [or Solicitor's Office] [or Bureau heads], we are taking a 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(3))."

We will send a final reply to you on or before **(10 WORKING DAYS FOLLOWING THE FIRST DUE DATE)**.

Sincerely,

(Name)  
Freedom of Information  
Act Officer

Sample 9

Sample Language For Delay In Processing Request  
(When Request Exceeds The 20-Day Limit)

ADDRESS:

Dear (Name):

This is in regard to your Freedom of Information Act (FOIA) request of (date) addressed to (name of office). You requested (subject of request). Your request was received by this office on (date).

**(SELECT ONE OF THE APPROPRIATE PARAGRAPH(S) BELOW):**

- o Because of the voluminous records that may be responsive to your request, additional time is necessary to enable us to determine which records or portions thereof should be provided. Accordingly, we anticipate a delay in providing you with our final response.
- o The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.
- o The records you requested are located at a number of our field offices and at headquarters. The (name of responsible office) will be coordinating the response since that office has jurisdiction over these records. As a result, we will need additional time to search for, collect, and review the material.
- o In accordance with 43 CFR 2.15(d), we are required to notify the submitter of material containing commercial and financial information when we receive a FOIA request for that material. The submitter has taken longer than anticipated to review the material. We expect to hear from them by (estimated date) and our response to your request will be forthcoming.

We expect to complete our response to you by (specify date). Under 43 CFR section 2.18, you have the right to appeal this response of your FOIA request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

**Sample 9**

Page 2

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) after the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "FREEDOM OF INFORMATION APPEAL" both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, please contact (name, phone number, and telephone number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer

**Sample 10**  
Sample Language Providing The  
Disposition Of A FOIA Response

ADDRESS

Dear (Name):

This is in regard to your Freedom of Information Act (FOIA) request of (date). Your request for information concerning complaints filed with the Joint Pipeline Office hotline was received (date). Your request is granted in part.

All names and personal identifiers and information which may identify individuals within these documents have been deleted in accordance with exemptions 6 and 7(C), as disclosure of such would constitute a clearly unwarranted invasion of personal privacy. Information directly related to any ongoing investigation being conducted by the Bureau of Land Management (BLM) on this issue, has been deleted in accordance with exemption 7(A) of the FOIA as release of these records could reasonably be expected to interfere with enforcement proceedings.

The following information is being withheld:

Names and personal identifiers are being deleted under exemption 6 and 7(C) of FOIA from memoranda, letters and notes from the files of BLM.

All information directly related to an ongoing investigation, is withheld under exemption 7(A) of FOIA from Memoranda, letters, and notes from the files of BLM.

The documents are presently being copied and the segregation of the information to be withheld under the FOIA exemptions as listed above is being completed. All releasable portion of documents will be sent to you as soon as possible.

You have sought a fee waiver for those documents requested, however, the fee incurred is less than \$15 and you will not be charged according to 43 CFR 2.20.

You have a right to appeal this partial denial with the Department. Your appeal should be in writing and should be addressed to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

**Sample 10**

**Page 2**

Your appeal must be in writing and received no later than 20 workdays (Saturdays, Sundays, and public legal holidays excepted) after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

If you have any questions, please call (name), at (phone number and FAX number).

Sincerely,

Freedom of Information  
Act Officer



Sample 11

Sample Language Indicating That The Request  
Is Being Treated As A FOIA

ADDRESS

Dear (Name):

This is in regard to your request of (date). You requested a copy of the Legal Land Description (LLD) data file pursuant to Civ. No. 89-3173(D.D.C., December 20, 1993). Your request was received on (date).

LLD data is classified as nonpublic by the Bureau of Land Management, and must be reviewed to determine if it is releasable under the FOIA. Enclosed is the information you requested with the following disclaimer:

"No warranty is made by the BLM as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data."

The cost of providing the documents enclosed is as follows: **(See sample with fee listing).**

Please send a check or money order made payable to the Bureau of Land Management at the address below:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Note:** In order to charge fees for responding to a request where the requester has not stated a willingness to pay fees or qualified for a fee waiver, the Bureau should halt processing of the request, and notify the requester of the fees involved and obtain their promise to pay the fees (43 CFR 2.20(g)).

## Sample 12

### Sample Language Indicating That Another Government Agency Should Not File a FOIA Request

This is in regard to your Freedom of Information Act (FOIA) request of (date). You requested Automated Lightning Detection Data on a monthly basis. A FOIA request can be made by "any person". The statute specifically excludes Federal agencies from the definition of a "person" (See Doyle v. United States Dep't of Justice, 494 F. Supp. 842, 843 (D.D.C. 1980)). Providing this information under the FOIA fee schedule is therefore not appropriate.

According to BLM Manual Section 1278, a data sharing agreement is the approved instrument when the fundamental purpose of the agreement is to purchase and exchange information between Federal entities when the information is requested more than once, and when no funds are involved. This office will be pleased to work with you in preparing such an agreement.

If you have any questions, please call (name), at (phone number and FAX number).

Sample 13

Sample Language To Requester To Pay Fees  
(When Under \$250)

The estimated fee for the documents you have requested is \$239.20 calculated as follows:

<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Total</u>
Search Time:		
Professional 6 hours	\$4.65 (for each 1/4/hr.)	111.60
(The first 2 hrs. of search time are not charged)		
Clerical 3 hours	\$2.30 ( for each 1/4 hr.)	27.60
Duplication 100 pages	\$ .13/page	0
(The first 100 pages of copying costs are not charged)		

Total \$239.20

Prepayment is not requested at this time, however, please furnish a written assurance of your willingness to pay the full amount for the documents to (name of FOIA Coordinator). You may wish to modify your request to reduce the fee at this time. We will not start processing your request until this written assurance has been received.

Should you agree to the estimated fees, and desire to make payment now, please make your check payable to the Bureau of Land Management at the following address:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

To assist in identifying this payment, make reference on the check to FOIA Control No. \_\_\_\_\_. If you have any questions, please call (name), at (phone number and FAX number).

Sample 14

Sample Language Requesting Advance Payment  
(When Previous Payments Were Delinquent)

ADDRESS

Dear (Name) :

This letter is in response to your Freedom of Information Act (FOIA) request of January 5, 1994, concerning (subject) addressed to (name). This office received your request on (date).

The estimated fee for the documents you have requested is \$239.20 calculated as follows:

<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Total</u>
Search Time:		
Professional 6 hours	\$4.65 (for each 1/4/hr.)	111.60
(The first 2 hrs. of search time are not charged)		
Clerical 3 hours	\$2.30 ( for each 1/4hr.)	27.60
Duplication 100 pages	\$ .13/page	0
(The first 100 pages of copying costs are not charged)		
		Total \$239.20

Moreover, our records show that you owe a balance of \$150 on a previous request. Under the Department of the Interior's regulations (43 CFR 2.20(h)(2)), we will not begin processing your present request until these fees are paid in full.

Please send a check or money order made payable to the Bureau of Land Management at the address below. In the meantime, your request will be held until this matter is resolved.

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 15**

Sample Language When Fees Are Under \$15 And  
No Payment Is Required

We are providing the following documents in response to your request. Fees for providing these documents are less than \$15 and are not being charged in accordance with 43 CFR 2.20(a)(2).

If you have any questions, please call (name), at (phone number and FAX number).

Sample 16

Sample Language When Costs Exceed \$250 And  
Prepayment Is Requested

ADDRESS

Dear Mr. (Name) :

This letter is in response to your Freedom of Information Act (FOIA) request dated (date) addressed to (name). You requested (subject).

Since you fall into the "other" fee category, we estimate that the fees to provide the requested information are as follows:

<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Total</u>
Search Time:		
Professional 6 hours	\$4.65 (for each 1/4/hr.)	111.60
(The first 2 hrs. of search time are not charged)		
Clerical 3 hours	\$2.30 ( for each 1/4hr.)	27.60
Duplication 100 pages	\$ .13/page	
0		
(The first 100 pages of copying costs are not charged)		
		Total
		\$239.20

In accordance with 43 CFR 2.20(h)(1), where it is anticipated that allowable fees are likely to exceed \$250 and the requester does not have a history of prompt payment of FOIA fees, the Bureau of Land Management may require the requester to make an advance payment. Please send a check or money order made payable to the Bureau of Land Management at the address below. In the meantime, your request will be held until we have been notified of your payment.

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

To assist in identifying this payment, make reference on the check to FOIA Control No. \_\_\_\_\_.

If you have any questions, please call (name), at (phone number and FAX number).

Sample 17

Sample Language When Records Would Have To Be Created Or  
Reply To Questions Would Have To Be Provided

ADDRESS

Dear Mr. (Name) :

This letter is in response to your Freedom of Information Act (FOIA) request dated (date) addressed to (name). You requested on floppy diskette a list of awards given in the Bureau between 1990 and 1994 in each state office according to certain specifications. You also asked several questions concerning the awards program, and its management.

We have conferred with Bureau offices and were unable to locate any records responsive to your request in the format you requested.

The FOIA requires agencies to furnish copies of existing records only, and not provide information in reply to questions. Under 43 CFR 2.14(c), the Bureau is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in existence at the time the request is made. Under 43 CFR section 2.18, you have the right to appeal this response by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and ensure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

If you have any questions, please call (name), at (phone number and FAX number).

Sincerely,

(Name)  
Freedom of Information

**Sample 18**

**Sample Language For No Record Response  
(No Records Can Be Located)**

We have reviewed our files and were unable to locate any records responsive to your request. Under 43 CFR section 2.18, you have the right to appeal this response by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and ensure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

If you have any questions, please call (name), at (phone number and FAX number).



Sample 19

Sample Language Withholding Records Under FOIA Exemptions  
(When No "Harm Statement" Is Necessary)

ADDRESS

Dear (Name) :

This is in response to your Freedom of Information Act request of (date) addressed to (name). This office received your request on (date). You requested the location and production information for the last year concerning the Craig 1 E well.

Your request is being provided in part, and denied in part. We are releasing well location maps and well bore diagrams. The following documents are protected under FOIA exemption 4, as "trade secrets and commercial or financial information obtained from a person that is privileged or confidential": (1) Production logs dating from 1993 to 1994, and (2) geological studies around the well site.

The person responsible for this partial denial (or denial- when all information is withheld) is [(name) and/or] the undersigned. Under 43 CFR section 2.18, you have the right to appeal this partial denial (or denial- when all information is withheld) of your FOIA request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of your original request and a copy of this response, and "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this partial denial (or denial- when all information is withheld) is in error.

If you have any questions, please call (name), at (phone number and FAX number).

## Sample 20

### Sample Language Denying A Fee Waiver (After Explanation By FOIA Requester Was Provided)

In your request you also sought a fee waiver. The Department of the Interior regulations state that "..... documents shall be furnished without charge ...if disclosure of the information is in the public interest because it (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government, and (2) Is not primarily in the commercial interest of the requester." Your request did not contain sufficient evidence to explain why the information would likely contribute to an understanding of specific government operations or activities, and disclosure would contribute to the understanding of the public at large. Therefore, we are denying your request for a waiver pursuant to 43 CFR 2.21(a).

Under 43 CFR section 2.18, you have the right to appeal this denial to your fee waiver request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this denial is in error.

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 21**

**Sample Language For Privacy Act Protected Records  
(To Person Who Is Subject Of File)**

In your Freedom of Information Act request you requested any files which contain information of any kind on yourself which may be located anywhere within the Bureau of Land Management.

Because some of the information requested falls under a Privacy Act System of records, in order to release records that are protected by the Privacy Act, we must have a statement indicating that you are in fact (requester's name), and that you authorize release of your personnel records to you at the address indicated above.

Once we receive this information, you will be notified of the fees for copying the Privacy Act files, and fees incurred for providing you with the other information covered by your FOIA request, which will be calculated using the FOIA fee schedule.

If you have any questions, please call (name), at (phone number and FAX number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer

**Sample 22**

**Sample Language To A Requester For  
Privacy Act Protected Records Of Another Person  
(Third Party Requester)**

You requested information on an employee's conduct investigation concerning at the District Office.

The information which you seek is maintained in the Employee Conduct Investigation File is a Privacy Act System of Records (LLM-20) and protected under the Privacy Act (5 U.S.C. 551a). The information is also withholdable under Exemption 6 of the Freedom of Information Act (FOIA), as it concerns "personnel and medical files and similar files; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Interior guidelines on the Privacy Act (43 CFR 2.56) require written consent of the individual to whom the records pertains before that record can be released except under exceptions designated in the 43 CFR 2.56(b) & (c). No documents can therefore be released at this time without that consent. Attached is an affidavit which will be required from the subject of the file to consent to release of the documents requested.

The person responsible for this denial **(or partial denial)** is [(name) and/or] the undersigned. Since this information is also withholdable under the FOIA, this is to notify you of your appeal rights by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "Freedom of Information Act Appeal" both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

Sample 22

Page 2

PRIVACY ACT STATEMENT: The purpose of this solicitation is to ensure that the records of individuals who are the subject of Bureau of Land Management systems of records are not wrongfully disseminated by the Bureau.

Pursuant to 5 U.S.C. 552a(b) I authorize the Bureau of Land Management to release any and all information relating to me to the following person: (Name), (attorney or other designee).

I certify that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(I)(3) by a fine of not more than \$5,000.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Sample 23**

**Sample Language Notifying That The Multiple FOIAs  
Are Being Aggregated And Fees Will be Charged**

You requested information concerning the adoption of wild horse and burros. The State Office also received letters from you on April 3, 1994, May 5, 1994, and May 6, 1994 concerning the same subject.

According to Department of Interior regulations, where there is reasonable basis to conclude that a requester has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly under 43 CFR 2.20(a)(3).

Aggregating the fees charged for processing your requests, the cost of providing the documents enclosed is as follows: (See sample with fee listing)

Please send a check or money order made payable to the Bureau of Land Management at the address below:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 24**

Sample Language For Release Of Database  
Including Disclaimer Statements

As indicated on the label on the tape being provided, the database you requested is being provided with the following disclaimer: **(Choose one of the three below depending on the record access category the system falls under)(also refer to Manual Section 1278):**

**Category 1** "No warranty is made by the Bureau of Land  
**or 2:** Management for use of the data for purposes not intended by BLM."

**Category 3:** "No warranty is made by the BLM as to the  
**(Unverified** accuracy, reliability, or completeness of  
**or Draft** these data for individual use or aggregate  
**Databases)** use with other data."

**\*\*\* (NOTE: DISCLAIMERS SHOULD BE MARKED ON EACH PAGE OF A COMPUTER PRINTOUT FROM A BLM DATABASE).**

The costs for providing this information are itemized below:

CPU Costs  
etc.

Please send a check or money order made payable to the Bureau of Land Management at the address below:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

Sample 25

Sample Language Following A Withdrawal  
Of A FOIA Appeal

ADDRESS

Dear (Name):

This is in regard to your February 5, 1994, Freedom of Information Act (FOIA) Appeal for non-response to your Freedom of Information Act request dated January 20, 1994. On February 2, 1994, this office informed you that the information you requested concerning a memorandum regarding increases in mining fees did not exist in this office.

Following your appeal you contacted the FOIA Coordinator at this office, and discussed other information which may satisfy your interest in this area. On February 10 you stated you would be satisfied with the information provided, and agreed to withdraw your appeal.

Accordingly, please provide the Department of the Interior FOIA Appeal Officer with a letter formally withdrawing your appeal, or contact him directly at the address below:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240  
(202) 208-xxxx

If you have any questions, please contact (FOIA Coordinator) at (phone number and FAX number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer



UNITED STATES  
DEPARTMENT OF THE INTERIOR

**FREEDOM OF INFORMATION  
ACT  
HANDBOOK**

**(383 DM 15)**



OFFICE OF THE SECRETARY  
Washington, D.C. 20240

## FOREWORD

This Handbook supplements the requirements prescribed by 383 DM 15 and 43 CFR Part 2, Subparts A and B. The Handbook establishes Departmentwide policy and procedures for administering and implementing the Freedom of Information Act (FOIA). It provides detailed guidance on when and how to apply the nine FOIA exemptions and includes examples of the-types of information which may be withheld under each. It also requires bureaus and offices to establish control systems for tracking and monitoring requests. All FOIA requests will be processed in accordance with the procedures contained therein. Use of this Handbook and the applicability of its provisions are authorized in 383 DM 15. Questions regarding the content of the Handbook may be directed to the Bureau FOIA Officers or Coordinators, who can also supply additional copies.

*Oscar W. Mueller Jr.*

Oscar W. Mueller, Jr.  
Director, Office of Management  
Improvement

Date: March 28, 1991

**DEPARTMENT OF THE INTERIOR**  
**DEPARTMENTAL MANUAL**  
FREEDOM OF INFORMATION ACT HANDBOOK  
(383 DM 15)

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Chapter 1 General

1.1

1.1 Purpose. This Departmental Manual Handbook, authorized in 383.DM 15.8, provides policy and general guidance for administering and implementing the Freedom of Information Act (FOIA) in the Department of the Interior (DOI). It is to be used in conjunction with the Department's FOIA regulations, 43 CFR Part 2, Subparts A and B (see Appendix 1 to this Chapter), the Office of the Solicitor FOIA Updates, the Department of Justice FOIA Updates, and the latest Freedom of Information Case List published by the Department of Justice.

1.2 Policy. It is the Department's policy to make records available to the greatest extent possible in keeping with the spirit and intent of the FOIA. The Department will furnish the records promptly to any member of the public upon written request and in accordance with the fees specified in Chapter 4.

1.3 Applicability.

A. The policy and procedures set forth in this Handbook apply to all bureaus and offices of the Department, including the Office of the Secretary. They cover all records and informational materials generated, maintained, and controlled by the Department which come within the scope of 5 U.S.C. 552.

B. The procedures do not apply to (see 43 CFR 2.11(c)):

(1) Records published in the Federal Register.

(2) Opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under 43 CFR Part 2, Subpart A.

(3) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in paragraph 5.4G of Chapter 5 if--

(a) The investigation or proceeding involves a possible violation of criminal law, and

(b) There is reason to believe that--

(i) The subject of the investigation or proceeding is not aware of its **pendency**, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

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Chapter 1 General

1.3B(4)

(4) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier unless the informant's status as an informant has been officially confirmed.

1.4 Authorities.

A. The Freedom of Information Act, as amended, 5 U.S.C. 552.

B. Executive Order 12600 of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information.

C. The Privacy Act of 1974, as amended, 5 U.S.C. 552a.

D. 43 CFR Part 2, Records and Testimony.

E. 383 DM 15, Freedom of Information Act.

F. 383 DM 1-13, Privacy Act of 1974.

1.5 Definitions.

A. "Act" and "FOIA" mean the Freedom of Information Act, 5 U.S.C. 552.

B. The "action office" is the office that is responsible for preparing the response to an FOIA request.

C. An "appeal" is a written notice the Department receives when--

(1) Records have been withheld;

(2) A request has been denied because of failure to describe requested records or for other procedural deficiency, or when it has been determined that the requested records do not exist or cannot be located;

(3) A fee waiver has been denied: or

(4) A request has not been decided within the time limits provided in paragraph 3.2 of Chapter 3.



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Chapter 1    General

1.5D

D.    "Bureau" refers to all bureaus and offices of the Department of the Interior, including the Office of the Secretary.

E.    "Commercial or financial information" means records provided to the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

F.    A "commercial-use request" is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The intended use of the records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

G.    The "control office" is the office responsible for receiving, assigning, and monitoring FOIA requests and maintaining necessary records for the annual report to Congress.

H.    The term "direct costs" means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

I.    The term "duplication" refers to the process of making copies of documents in response to an FOIA request. Such copies can take the form of paper, microform, audiovisual **materials, or** machine-readable documentation. The Department will provide materials in the form in which they are stored and maintained, unless it is feasible to provide them in another form.

J.    An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

K.    An "FOIA request" (commonly referred to as the "initial request") is a written request for records made by the public that specifically invokes the Act. However, a bureau may treat a request for records that does not specifically invoke the Act as an FOIA request.

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L. "Freelance journalists" may be considered representatives of the news media if they demonstrate a solid **basis** for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific freelance assignment from a news organization may indicate a solid basis for expecting publication.

M. An "individual" is any person, institution, or company: a State, local, or foreign government; or an Indian tribe.

N. An "initial denial" is the first letter sent to the requester denying either part or all of the initial request for a record or a fee waiver.

O. A "noncommercial scientific institution" is an institution that is not operated for commerce, trade, or profit and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

P. The term "record" includes all books, papers, maps, charts, plats, plans, architectural drawings and microfilm: all machine-readable material such as magnetic tape, disks, drums, and punched cards; all audiovisual material such as still pictures, sound and video recordings, and all other documentary materials, regardless of physical form or characteristics, made or received by the Department in pursuance of Federal laws or in connection with the transaction of public business and preserved or appropriate for preservation by the Department as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the recorded data.

Q. A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category.

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R. A "requester" is an individual who has asked in writing to see or receive a copy of an agency record.

S. The "responsible official" is the person in the action office who is charged with preparing the response to the initial request.

T. The term "review" refers to the process of examining documents located in response to a commercial-use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

U. The term "search" refers to all the time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of the document that it is covered by the request. Searches may be done manually or by computer using existing programming.

V. A "submitter" is someone other than a representative of the Federal Government who provides information to the Department.

W. "Workday" means a regular Federal working day. It does not include Saturdays, Sundays, or legal holidays.

## 1.6 Responsibilities.

### A. Departmental.

(1) The Assistant Secretary - Policy, Management and Budget (**PMB**) is responsible for administering the FOIA in the Department. PMB is also assigned appellate authority for deciding appeals after obtaining advice from the Office of the Solicitor and in consultation with the Assistant to the Secretary and Director, Office of Public Affairs, and the Assistant Secretary for the appropriate program. This authority, with limited exceptions, has been delegated to the Director, Office of Management Improvement (see 212 DM 9.3).

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(2) The Departmental FOIA Officer, located in the Office of Management Improvement (**PMI**), Division of Directives and Regulatory Management (**DRD**), has overall responsibility for developing regulations, guidelines, procedures, and standards for the Department's FOIA program; training employees to ensure compliance with the Act; and preparing the Department's annual report to Congress. The Department's FOIA Appeals Officer, also located in DRD, is responsible for processing appeals and maintaining the information prescribed under 43 CFR 2.18. In addition, DRD is responsible for complying with the public information requirements prescribed in 383 DM 15, where appropriate and when applicable for the Secretariat.

(3) The Office of Administrative Services (**PMO**), in which the FOIA Coordinator for the Office of the Secretary is located, is responsible for coordinating FOIA requests directed to Office of the Secretary components, preparing and reviewing responses to requests pertaining to **PMO** programs and functions, and developing related guidelines and procedures. **PMO** is also responsible for gathering and compiling material for the Office of the Secretary's portion of the Department's annual report to Congress. The Office of Inspector General, the Office of the Solicitor, the Office of Aircraft Services, and the Office of Hearings and Appeals are responsible for their own FOIA programs.

(4) The Office of the Solicitor (**SOL**) is responsible for interpreting the Act and providing guidance to bureaus and offices as required by 43 CFR 2.16(a)(4). The Office also provides legal assistance in the development of regulations and FOIA training for its program attorneys.

(5) The Executive Secretariat is responsible for the receipt, assignment, routing, and monitoring of responses to FOIA requests directed to the Secretary, Deputy Secretary, the Secretary's Immediate Office, and the Department when a particular bureau/office is not specified.

B. Bureaus. Bureaus and offices are responsible for the following:

(1) Developing and issuing internal procedures to ensure compliance with the law and the Department's policy and procedures implementing the FOIA;

(2) Designating an FOIA Officer/Coordinator to implement the Act within the bureau--this individual is the primary contact between the Departmental FOIA Officer and the bureau for FOIA activities;

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(3) Maintaining records necessary for the preparation of the annual report prescribed in 383 DM 15.6;

(4) Complying with the public information requirements prescribed in 383 DM 15.7; and

(5) Ensuring that at least one individual within each organization that handles FOIA requests is familiar with the Act and able to respond to a request properly.

1.7 Requests Not Covered.

A.    The following types of requests are not covered under the FOIA:

(1) A request by an employee of a Federal agency acting in an official capacity. The FOIA does not govern exchanges of information between Federal agencies (see the DOJ FOIA Update, Winter 1985, Vol. VI, No. 1, p. 6).

(2) A request from a congressional committee or subcommittee on a subject within its jurisdiction. The FOIA does not give agencies the authority to withhold information from Congress (see 5 U.S.C. 552(d)). However, if an individual Member of Congress or a congressional staff member requests records pursuant to the FOIA, the request would be handled as any other FOIA request.

(3) A request by an individual for records about himself/herself which is processed under the Department's Privacy Act regulations (43 CFR 2, Subpart D) and 383 DM 1-13, **except**, however, that an individual may also invoke the FOIA to obtain records pertaining to himself/herself. In cases where the request states that it is being made pursuant to both statutes, records will be disclosed in accordance with the law which affords the greatest access.

(4) A request to declassify national security classified materials. Such requests are processed under 43 CFR 2.41.

(5) A request for information, as opposed to a request for records (see paragraph 3.1 of Chapter 3).

B.    The requirement of the FOIA that records be available to the public refers only to records in existence at the time the request is made. It imposes no obligation on the Department to create a new record--for example, combining or compiling selected items from manual files, preparing a new computer program, or

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calculating proportions, percentages, frequency distributions, trends or comparisons--to respond to a request. When creating a new record is less burdensome than disclosing large volumes of unassembled material, the Department may elect to do so (see 43 CFR 2.14(c) and Illustration 1 to this Chapter).

C. The FOIA applies only to records maintained by agencies within the Executive Branch of the Federal Government, including the Executive Office of the President, and independent regulatory agencies. The personal staff of the President and units within the Executive Office of the President whose sole function is to advise the President do not fall within the definition of agency. Entities whose functions are not limited to advising and assisting the President (e.g., the Office of Administration within the White House) are subject to the FOIA.

D. Presidential transition teams are not Federal agencies subject to the FOIA.

1.8 Who Can Make an FOIA Request? An individual (including a non-U.S. citizen), corporation, association, public interest group, or the media; a State, local, or foreign government; or an Indian tribe can make a request under the FOIA. The only exception is a fugitive from justice. Official requests from other Federal agencies and Congress are not subject to the FOIA (see paragraph 1.7 of this Chapter).

1.9 Personal Records. The FOIA only applies to agency records, not to the personal records of individual employees. Personal records are not subject to agency creation or retention requirements, and are not distributed to other employees for their official use. They are created and maintained primarily for the convenience of the employee. In determining whether documents are personal records, evaluate the documents in light of the criteria given below. Illustration 2 provides examples of how to apply these criteria. Documents should be reviewed on a case-by-case basis considering the totality of the circumstances surrounding each document.

A. Creation. Was the document created by an agency employee on agency time, with agency materials, at agency expense? (If not, then it probably is not an agency record, on that basis alone.)

B. Content. Does the document contain substantive information? (If not, then it probably is not an agency record, on that basis alone.) Does it contain personal as well as

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official business information? Even though a record may have certain personal characteristics when analyzed under the criteria in this paragraph, it may nevertheless be an agency record if its release would contribute to an understanding of the operations or activities of the Government.

C. Purpose. Was the document created solely for an individual employee's personal convenience? Alternatively, to what extent was it created to facilitate agency business?

D. Distribution. Was the document distributed to anyone else for any reason, such as for a business purpose? How wide was the circulation?

E. Use. To what extent did the document's author actually use it to **conduct** agency business? Did others use it?

F. Maintenance. Was the document kept in the author's possession, or was it placed in an official agency file? Personal records should be maintained separately and not placed in official files along with agency records. Once an FOIA request is received for an agency file, any personal records in that file will automatically be subject to disclosure under the FOIA.

Note: The nature of the document rather than its location or marking must be considered. The fact that an employee stamps a record "Personal" and places it in his/her desk drawer does not in and of itself make it a personal record.

G. Disposition. Was the document's author free to dispose of it at his/her personal discretion? What was the actual disposal practice?

H. Control. Has the agency attempted to exercise control over the document through applicable maintenance and disposition regulations? Did it do so by requiring the document to be created in the first place? If so, then it is an agency record.

I. Segregation. Is there any practical way to segregate out any personal information in the document from official business information?

J. Revision. Was the document revised or updated after the fact for recordkeeping purposes?

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1.10 Litigation.

' A. If an official is aware of any litigation pending, he/she will notify the Bureau FOIA Officer and the Division of General Law, Office of the Solicitor. Officials located in the field will notify the appropriate headquarters, regional or field solicitor, and the Division of General Law.

B. If the requester sues the Department for withholding records or the submitter of the information sues the Department to prevent disclosure (reverse **FOIA**), the responsible official will cooperate with the Office of the Solicitor in responding to the litigation.

1.11 Compulsory Process (Subpoena). If the production of any record of the Department is sought by compulsory process, e.g., a subpoena, the procedures in 43 CFR 2.80 should be followed, including notifying the Office of the Solicitor.

1.12 Disciplinary Action. If an individual is suspected of acting arbitrarily or capriciously with respect to withholding records under the FOIA, the Office of the Special Counsel may conduct an investigation to determine whether disciplinary action is warranted. The Department is obligated to take whatever action the Office recommends in addition to any sanctions the Department decides to impose.



## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 2

### PART 2—RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

#### Subpart A—Opinions in Adjudication of Cases, Administrative Manuals

##### Sec.

##### 2.1 Purpose and scope.

##### 2.2 Opinions in adjudication of cases.

##### 2.3 Administrative manuals.

#### Subpart A—Opinions in Adjudication of Cases, Administrative Manuals

##### § 2.1 Purpose and scope.

This subpart contains the regulations of the Department of the Interior concerning the availability to the public of **opinions** issued in the adjudication of cases and of administrative manuals. Persons interested in obtaining access to other records are directed to the procedures for submission of Freedom of Information requests set out in Subpart B of this part.

##### § 2.2 Opinions in adjudication of cases.

(a)(1) Copies of final decisions and orders issued on and after July 1, 1970, in the following categories of cases are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203:

(i) Contract appeals;

(ii) Appeals from decisions rendered by departmental officials relating to the use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf;

(iii) Appeals from orders and decisions issued by departmental officials and administrative law judges in proceedings relating to mine health and safety; and

(iv) Appeals from orders and decisions of administrative law judges in Indian probate matters other than those involving estates of Indians of the Five Civilized Tribes and Osage Indians.

(2) Copies of final **opinions and orders** issued in the following categories of cases are available for inspection and copying in the Docket and Records Section, Office of the Solicitor, Interior Building, Washington, DC 20240:

(i) Tort claims decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors or Field Solicitors on tort claims;

(ii) Irrigation claims under Public Works Appropriation Acts (e.g., 79 Stat., 1103) or 25 U.S.C. 388 decided in the headquarters office of the Office of the Solicitor, and appeals from decisions of Regional Solicitors on irrigation claims;

(iii) Appeals under § 2.18 respecting availability of records;

(iv) Appeals from decisions of officials of the Bureau of Indian Affairs, and Indian enrollment appeals; and

(v) Appeals from decisions of officers of the Bureau of Land Management and of the Geological Survey in proceedings relating to lands or interests in land, contract appeals, and appeals in Indian probate proceedings, issued prior to July 1, 1970.

(3) An Index-Digest is issued by the Department. All decisions, opinions and orders issued in the categories of cases described in paragraphs (a)(1), (i), (ii), and (iii) of this section (that is, contract appeals, land appeals, and mine health and safety appeals), are covered in the Index-Digest; in addition, the Index-Digest covers the more important decisions, opinions and orders in the remaining categories of cases described in paragraphs (a)(1)(iv) and (a)(2)(i) through (iv) of this section, and the more important opinions of law issued by the Office of the Solicitor. The Index-Digest is available for use by the public in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, in the Docket and Records Section, Office of the Solicitor, Interior Building, Washington, DC 20240, and in the offices of the Regional Solicitors and Field Solicitors. Selected decisions, opinions, and orders are published in a series entitled "Decisions of the United States Department of the Interior" (cited as

I.D.), and copies may be obtained by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(4) Copies of final opinions and orders issued by Regional Solicitors on tort claims and irrigation claims, and copies of final opinions and orders on appeals in Indian probate proceedings issued by Regional Solicitors prior to July 1, 1970, are available for inspection and copying in their respective offices. Copies of final opinions and orders issued by Field Solicitors on tort claims are available for inspection and copying in their respective offices.

(b)(1) Copies of final decisions and orders issued prior to July 1, 1970, on appeals to the Director, Bureau of Land Management, and by hearing examiners of the Bureau of Land Management, in proceedings relating to lands and interests in land are available for inspection and copying in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, and in the offices of the Departmental administrative law judges.

(2) Copies of final decisions, opinions and orders issued on and after July 1, 1970, by departmental administrative law judges in all proceedings before them are available for inspection and copying in their respective offices and in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

(3) Copies of final decisions, opinions and orders issued by administrative law judges in Indian probate proceedings are available for inspection and copying in their respective offices.

##### § 2.3 Administrative manuals.

The Departmental Manual is available for inspection in the Departmental Library, Interior Building, Washington, D.C., and at each of the regional offices of bureaus of the Department. The administrative manuals of those bureaus which have issued such documents are available for inspection at the headquarters offices and at the regional offices of the bureaus.

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**Subpart B—Requests for Records**

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**Subpart B—Requests for Records**

**§ 2.11 Purpose and scope.**

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, personnel seeking records from the Department may find it useful to consult with the appropriate bureau FOIA officer. Bureau offices are listed in Appendix B.

(c) The procedures in this subpart do not apply to:

(1) Records published in the Federal Register, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under Subpart A of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) If-

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that-

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

**§ 2.12 Definitions.**

(a) Act and FOIA mean the Freedom of Information Act, 5 U.S.C. 552.

(b) Bureau refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list of bureaus is contained in Appendix B.

(c) Working day means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

**§ 2.13 Records available.**

(a) Department policy. It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) Statutory disclosure requirement. The Act requires that the Department, on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) Statutory exemptions. Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the privacy Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information

compiled by a **criminal law enforcement authority** in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(o) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) **Decisions on requests.** It is the policy of the Department to withhold information falling within an exemption only if-

(i) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) **Disclosure of reasonably segregable nonexempt material.** If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released.

#### § 2.14 Requests for records.

(a) **Submission of requests.** (1) A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, he or she may direct a request to the head of the appropriate bureau or to the bureau's FOIA officer. Addresses for bureau heads and FOIA officers are contained in Appendix B.

(2) **Exceptions.** (i) A request for records located in all components of the Office of the Secretary (other than the Office of Hearings and Appeals) shall be submitted to: Director, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240. A request for records located in the Office of Hearings and Appeals shall be submitted to: Director, Office of Hearings and Appeals, 4VIS Wilson Boulevard, Arlington, Virginia 22203.

(ii) A request for records of the Office of Inspector General shall be submitted to: Inspector General Office of the Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(iii) A request for records of the Office of the Solicitor shall be submitted to: Solicitor, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

(b) **Form of requests.** (1) Requests under this subpart shall be in writing and must specifically invoke the Act

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall-

(A) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see § 2.20(b)-(e) for definitions) and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 2.20 (f) and (g), the time for responding to requests may be delayed—

(A) If a requester has not sufficiently identified the fee category applicable to the request

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Department or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) **Creation of records.** A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Department determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Department may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

#### § 2.15 Preliminary processing of requests.

(a) **Scope of requests.** (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head a bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the bureau FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) **Intradepartmental consultation and referral.** (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or is of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17

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**Subpart B—Requests for Records**

**§ 2.11 Purpose and scope.**

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, personnel seeking records from the Department may find it useful to consult with the appropriate bureau FOIA officer. Bureau offices are listed in Appendix B.

(c) The procedures in this subpart do not apply to:

(1) Records published in the Federal Register, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under Subpart A of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) If—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is a reason to believe that—  
(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an Informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

**§ 2.12 Definitions.**

(a) Act and FOIA mean the Freedom of Information Act, 5 U.S.C. 552.

(b) Bureau refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list of bureaus is contained in Appendix B.

(c) Working day means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

**§ 2.13 Records available.**

(a) Department policy. It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) Statutory disclosure requirement. The Act requires that the Department on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) Statutory exemptions. Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel ruler and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the privacy Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records at information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information

**§ 2.17 Time limits for processing initial requests.**

(a) **Basic limit.** Requester shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) **Running of basic time limit.** (1) The 10 working day time limit begins to run when a request meeting the requirement of § 2.14(b) is received at a field installation or bureau headquarters designated in § 2.14(a) to receive the request.

(2) The running of the basic time limit may be delayed or tolled as explained in § 2.20(f), (g) and (h) if a requester-

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or

(ii) Has not made a required advance payment

(c) **Extensions of time.** In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended for more than 10 working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more component of the Department having substantial subject-matter interest therein.

(d) **Notice of extension.** A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) **Treatment of delay as denial.** If no determination has been reached at the end of the 10 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 2.18.

(f) **Notice of delay.** When a determination cannot be reached within the time limit, or extension thereof, the

requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal to the Assistant Secretary—Policy, Budget and Administration, including a description of the procedure for filing an appeal in § 2.18.

**§ 2.18 Appeals.**

(a) **Right of appeal.** A requester may appeal to the Assistant Secretary—Policy, Budget and Administration when-

(1) Records have been withheld.

(2) A request has been denied for failure to describe requested record or for other procedural deficiency or because requested records cannot be located,

(3) A fee waiver has been denied, or

(4) A request has not been decided within the time limits provided in § 2.17.

(b) **Time for appeal.** An appeal must be received no later than 20 working days after the date of the initial denial, in the case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

(c) **Form of appeal.** (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

**§ 2.19 Action on appeals.**

(a) **Authority.** Appeals shall be decided by the Assistant Secretary—Policy, Budget and Administration, or the Assistant Secretary's designee, after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary.

(b) **Time limit.** A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

(c) **Extensions of time.** (1) If the time limit for responding to the initial request

for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to the right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched and of the right to seek judicial review.

(d) **Form of decision.** (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested record or portion thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the record available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or put the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the United States District Court for the district in which the withheld record is located, or in which the requester resides or has his or her principal place of business or in the United States District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objection of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

(c) *Records of other departments and agencies.* (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless—

(i) The record is of primary interest to the Department.

(ii) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to the Act.

The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) *Consultation with submitters of commercial and financial information.*

(i) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever—

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(f).

(4) Notification to a submitter is not required if:

(i) The bureau determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);

(iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submittal, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

(5) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

#### § 2.16 Action on initial requests.

(a) *Authority.* (1) Requests to field installations shall be decided by the head of the installation or by such higher authority, as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when and where the record is available for inspection or, as the case

may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedures for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(3) If a claim of confidentiality has been found frivolous in accordance with § 2.15(d)(4)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A reference to the specific exemption or exemptions authorizing the withholding;

(ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;

(iii) A listing of the names and titles or position, of each person responsible for the denial; and

(iv) A statement that the denial may be appealed to the Assistant Secretary-policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed to the Assistant Secretary-Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(i) Form **of payment**. Payment of **fees** should be **made** by check or **money order** payable to the **Department** of the Interior or the bureau **furnishing** the **information**. The term **United States** or the initials **"U.S."** should not be Included on the check or money order. Where appropriate, the official **responsible** for handling a request may require that payment by check be made in the **form of a certified check**.

(j) **Billing procedures**. A bill for collection, Form **DI-1040**, shall be prepared for each request that **requires** collection of **fees**. The **requester** shall be provided the **first sheet** of the **DI-1040**. This **Accounting Copy** of the **Form** shall be **transmitted** to the agency's finance office for entry into **accounts receivable records**. Upon receipt of payment **from the requester**, the recipient shall **forward** the payment along with a copy of the **DI-1040** to the finance office.

(k) **Collection of fees**. The bill for collection or an accompanying letter to the **requester** shall include a statement that interest **will** be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, **if the fees are** not paid within 30 calendar days of the date of the bill for collection **is mailed or hand-delivered** to the requester. This requirement does not apply if the requester is a unit of state or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees (see 4 CFR Parts 101-105).

#### **§ 2.21 Waiver of fees.**

(a) **Statutory fee waiver**. (1) Document, shall be furnished without charge or at a charge reduced below the fees chargeable under 9 2.20 and Appendix A if disclosure of the information is in the public interest because it—

(i) **is likely to contribute significantly** to public understanding of the operations or activities of the government and

(ii) **is not primarily in the commercial interest** of the requester.

(2) **Factors to be considered in determining whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government"** are the following:

(i) Does the record concern the operation or activities of the government? Records concern the operations or activities of the government if they relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or

activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated.

Records developed outside of the government and submitted to or obtained by the Department may relate to UK operations and activities of the government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement or other activity that involve private entities.

(ii) If a record concerns the operations or activities of the government, is its disclosure likely to contribute to public understanding of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the relationship between the two. Is then a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of government operations or activities? Is the requested information sought by the requester because it may be informative on government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on government operations or activities?

(iii) If then is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information

already in the public domain because it has, for example, previously been published or is routinely available to the general public in a public reading room.

(3) Factors to be considered in determining whether disclosure "is primarily in the commercial interest of the requester" are the following:

(i) Does the requester have a commercial interest that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. An entity's status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If the requester has a commercial interest, will disclosure be primarily in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interest.

(i) **Notice of denial**. If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(i) A statement of the basis on which the waiver or reduction has been denied.

(ii) A listing of the names and titles or positions of each person responsible for the denial

(iii) A statement that the denial may be appealed to the Assistant Secretary-Policy, Budget and Administration and a description of the procedures in 9 2.18 for appeal.

(b) **Discretionary waivers**. Fees otherwise chargeable may be waived at the discretion of a bureau if a request involves:

(1) **Furnishing** unauthenticated copies of documents reproduced for **gratuitous distribution**;

(2) **Furnishing** one copy of a **personal document** (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) **Furnishing** one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held

(4) **Furnishing records** to donors with respect to their gifts;

(5) **Furnishing records** to individuals or private non-profit organizations

## § 2.20 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the schedule of charges contained in Appendix A to this part.

(2) Fees shall not be charged if the total amount chargeable does not exceed \$15.00.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in-

(i) Searching for requested records.

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure.

(iii) Deleting reasonably segregable exempt matter.

(iv) Monitoring the requesters' inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher

education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (i) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in-

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure.

(iii) Deleting reasonably segregable exempt matter.

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3)(i) A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category.

(ii) Free-lance journalists may be considered "representative of the news media" if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraph (b), (c) or (d) of this section shall be charged fees for document search and duplication,

except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in-

(i) Examining requested records to determine whether they are exempt from disclosure,

(ii) Deleting reasonably segregable exempt matter,

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) When a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.



## Appendix A-Fees

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for, reviewing and duplicating requested records in connection with FOIA requests made under Subpart B of this part and to services performed in making documents available for inspection and copying under Subpart A of this part. The duplicating fees stated in the schedule are also applicable to duplicating of records in response to requests made under the Privacy Act. The schedule also states the fee to be charged for certification of documents.

(1) **Copies, basic fee.** For copies of document reproduced on a standard office copying machine in sizes to 8 1/2" x 14", the charge will be \$0.13 per page.

**Examples:** For one copy of a three-page document, the fee would be \$0.39. For two copies of a three-page document, the fee would be \$0.78. For one copy of a 60-page document the fee would be \$7.80.

(2) **Copies, documents requiring special handling.** For copies of documents which require special handling because of their age, size, etc., cost will be based on direct costs of reproducing the materials.

(3)-(4) [Reserved]

(5) **Searches.** For each quarter hour, or portion thereof, spent by clerical personnel in manual searches to locate requested records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in manual searches to locate requested records because the search cannot be performed by clerical personnel: \$4.65.

Search time for which fees may be charged includes all time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of a document that it is covered by a request.

(6) **Review of records.** For each quarter hour, or portion thereof, spent by clerical personnel in reviewing records: \$2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in reviewing records: \$4.65.

Review is the examination of documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemptions.

(7) [Reserved]

(8) **Certification.** For each certificate of verification attached to authenticated copies of records furnished to the public the charge will be \$0.25.

(9) [Reserved]

(10) **Computerized records.** Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

(a) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(b) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output, remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(c) Material costs (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(d) ADP facility managers must assure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, itemized listings of operations and associated costs for processing the job may be furnished to members of the public.

(e) Requesters entitled to two hours of free search time under 43 CFR 2.20(e) shall not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

(11) **Postage/ mailing costs.** Mailing charge may be added for services (such as express mail) that exceed the cost of first class postage.

(12)-(13) [Reserved]

(14) **Other services.** When a response to a request requires services or material other than those described in this schedule, the direct cost of such services or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

(15) **Effective date.** This schedule applies to all requester made under the Freedom of Information Act and Privacy Act after December 30, 1987.

having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department

(6) **Furnishing records** to state, local and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) **Furnishing a record** when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department);

(8) **Furnishing records when to do so** is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees);

(9) **Furnishing one copy of a record** in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons injured by the Government).

## § 2.22 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) **Definitions.** As used in the section:

(1) "Act" means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1978, Pub. L. 94-377, 90 Stat. 1083 (30 U.S.C. 181 et seq.), and the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 et seq.).

(2) "Exploration license" means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201(b)).

(3) "Fair-market value of coal to be leased" means the minimum amount of a bid the Secretary has determined he is willing to accept in leasing coal within leasing tracts offered in general lease sales or tenders and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations, controlled by any of such entities pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).

(4) "Information" means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources, which fit within an exemption to the

Freedom of Information Act, 5 U.S.C. 552(b).

(b) **Applicability.** This section applies to the following categories of information:

(1) **Category A. Information** provided to or obtained by a bureau under section 2(b)(3) of the Act from the holder of an exploration license;

(2) **Category B. Information** acquired from commercial or other sources under service contract with Geological Survey pursuant to section 8A(b) of the Act, and information developed by the Geological Survey under an exploratory program authorized by section 8A of the Act;

(3) **Category C. Information** obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) **Category D. Information** provided to the Secretary by a federal department or agency pursuant to section 8A(e) of the Act; and

(5) **Category E. The fair-market value** of coal to be leased and comments received by the Secretary with respect to such value.

(c) **Availability of information.** Information obtained by the Department from various sources will be made available to the public as follows:

(1) **Category A—Information.** Category A information shall not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) **Category B—Information.** Category B information shall be withheld from the public; it will be made available by means of and at the time of open filing or publication by Geological Survey.

(3) **Category C—Information.** Category C information shall not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) **Category D—Information.** Category D information shall be made available to the public under the terms and conditions to which, at the time he or she acquired it, the head of the department or agency from whom the Secretary later obtained the information agreed.

(5) **Category E—Information.** Category E information shall not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its

release prior to the issuance of a lease is in the public interest.

SAMPLE LETTER

RECORDS DO NOT EXIST

(Agency Not Obligated to Create a Record)

Ms. Ella Cution  
A & M Realtors  
1316 Madison Street  
Olney, MD 20832

Dear Ms. Cution:

This letter is in response to your Freedom of Information Act (FOIA) request of March 10, 1989, in which you seek access to an inventory of Government commercial activities for the State of Arizona. The Bureau does not maintain a listing of A-76 activities by State or geographical area, but rather by type of commercial activity.

Under 43 CFR 2.14(c), the Department is not required to create or compile a record to respond to an FOIA request. The Act applies only to records in existence at the time the request is made.

In addition to myself, Janice Jones, Attorney-Advisor, Office of the Solicitor, was involved in determining this response.

You may appeal this response, in accordance with 43 CFR 2.18, by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Your appeal must be received no later than 20 workdays after the date of this letter. Both the envelope and the letter should be marked "FREEDOM OF INFORMATION APPEAL." A copy of your original request and this letter should accompany your appeal, **along** with any information you have which leads you to believe the records do exist, including where they might be found, if the location is known to you.

Sincerely,

N. M. Small  
Chief, Procurement and  
Property Management Division

## EXAMPLES OF PERSONAL VERSUS AGENCY RECORDS

1. A supervisor maintains his own personal notes to use as a memory jogger for performance evaluations. They are maintained privately and not circulated to any other employees. The notes are not kept in official agency files, and the supervisor can remove them from the office and destroy them at will.

Although the notes are physically located in the Department and concern DOI employees, they are not under the control of the Department and not subject to the Privacy Act. The supervisor created the notes solely for his own convenience and he is the only one privy to them. They may not be passed on to another supervisor nor may they be used wholly or in part to support a performance rating or any personnel action. The notes are personal records and as such exempt from the provisions of the FOIA.

Note: If personal records, e.g., supervisor's notes, are removed from the immediate custody of the supervisor and placed in the Supervisors' Personnel Files, they will be subject to releasability under the Act. Once an FOIA request is received, the files cannot be altered.

2. Every week the Director's secretary prepares a daily agenda listing the activities for each day of the upcoming week. The agenda is circulated to the staff for informational purposes.

The daily agenda is an agency record. The document, which is created at agency expense by an agency employee, is circulated to the staff for a business purpose. It is created for the express purpose of facilitating the daily activities of the office. Any personal information could easily be segregated from the business material, if necessary.

3. A supervisor keeps an appointment calendar on her desk on which she notes upcoming business meetings as well as personal appointments, e.g., lunch with an old schoolmate, doctor's appointment, etc. Her secretary may note appointments that have been scheduled for her.

The calendar is not an agency record. Although created by an agency employee at agency expense, it contains little, if any, substantive information. The calendar was created for the supervisor's personal convenience so that she could organize both her personal and business appointments. It is not circulated to other employees as it was not intended for their use. The agency did not require the supervisor to maintain the calendar and she is free to destroy it at any time.

Note: To avoid problems, an official may wish to maintain two calendars, one for business and another for personal use.

4. The division chief keeps old telephone message slips that indicate the names of the callers, the dates and times of the calls, the telephone numbers where the callers can be reached, and in some cases, brief messages.

The message slips are not agency records. Although created by the division chief's secretary at agency expense, the documents contain no substantive information. The documents were created solely for the official's personal convenience and not used by anyone other than the employee. The message slips, in this instance, are retained by the official and not placed in agency files. The official may destroy the notes at his own discretion.

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Chapter 2    Controlling FOIA Requests

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2.1

2.1    Control System.

A.    Each bureau will establish and maintain a control system which ensures that--

(1) Responses are prepared properly and in a timely manner,

(2) Information provided in the Department's annual report to Congress is accurate and complete, and

(3) Background information is maintained to support possible litigation.

B.    All FOIA requests will be entered into the system.

2.2    Bureau Responsibility.    Each bureau will have at least one control office that will be responsible for:

A.    Reviewing all incoming requests and determining the action office responsible for preparing the response.

B.    Assigning a control number to each request (e.g., OS-90-001 would be assigned to the first request received by the Office of the Secretary in calendar year 1990).

C.    Maintaining a log of all FOIA requests received (see Illustration 1 to this Chapter).    The log should provide the following information:

- (1)    FOIA control number assigned;
- (2)    Name and affiliation of the requester;
- (3)    Date of letter;
- (4)    Date received;
- (5)    Date response due;
- (6)    Date response signed;
- (7)    Action office;
- (8)    Subject of request;
- (9)    Disposition - whether granted or denied;

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Chapter 2 Controlling FOIA Requests

2.2C(10)

- (10) **Exemptions** applied if a denial;
- (11) Time extensions taken;
- (12) Fees due, collected, and waived; and
- (13) Any other remarks; e.g., whether it has been referred to another bureau in part.

D. Noting each FOIA request with the following information:

- (1) FOIA control number;
- (2) Date received;
- (3) Date due; and
- (4) Action office.

E. Controlling and tracking the requests to make sure that deadlines are met (see paragraph 3.2 of Chapter 3), responses are complete and accurate, records are provided, fees are collected, etc. (see Illustration 2 to this Chapter which provides a sample request control form).

2.3 Action Office Responsibility.

A. The action office will perform the necessary research and prepare the response to the requester, a copy of which will be sent to the control office (the FOIA control number should be indicated in the upper right-hand corner).

B. The action office will send a copy of all denials to the Bureau FOIA Officer.

2.4 Handling FOIA Requests.

A. Each request should be affixed to a transmittal sheet or folder that identifies it as an FOIA request requiring priority treatment.

B. To ensure a timely response by the Department, FOIA requests will be processed as expeditiously as possible. Requests will be designated "**FOIA**" and hand-carried from one office to the next whenever practical to do so.

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Chapter 2 Controlling FOIA Requests

2.5

2.5 Recordkeeping. FOIA files may constitute a system of records under the Privacy Act if they are retrievable by name or some other type of personal identifier. Files subject to the Act will be maintained in accordance with the Department's regulations (43 CFR Part 2, Subpart D), 383 DM 1-13, and the appropriate Privacy Act systems notice (OS-71, FOIA Request Files System: and OS-69, FOIA Appeal Files).

A. Initial Requests.

(1) Bureaus will maintain an official file on each FOIA request received. The official file will include:

(a) A copy of the incoming letter and DOI's response:

(b) A detailed account of every record or part of it disclosed to a requester (or a copy of the documents disclosed, with any deletions marked);

(c) Notations of any request to waive fees and the agency's response;

(d) Any records concerning the status of the request, **followup** correspondence with the requester, and a record of any time extensions taken:

(e) Intra-agency communications concerning the request:

(f) A copy of the DI 1040, Bill for Collection, and any related records; and

(g) A copy of any appeal **filed** and the Department's determination on the appeal.

(2) Files created in response to requests for information under the FOIA are covered under General Records Schedule (GRS) 14, item numbers 11, 13 through 15, and 36, and are maintained by the action office, central file facility, or the FOIA Officer/Coordinator, as appropriate.

B. Appeals. The FOIA Appeals Officer maintains the official files for all FOIA appeals in accordance with GRS-14, item 12. The file consists of the appellant's letter and the Department's reply and any related correspondence and supporting documents.



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Chapter 2 Controlling FOIA Requests

**2.5C**

C. Disposition Authority. An FOIA request for records maintained beyond their authorized destruction date will bar the disposal of such records pending final resolution of the request, including resolution of any appeal and litigation (see 384 DM 1.6F).

2.6 Coordination.

A. If a program office receives an FOIA request directly from the requester, it will send a copy of the request to the control office to be logged in and assigned a control number (see paragraph 2.4B of this Chapter).

B. Any time an action office refers an FOIA request to another component within the same bureau, or to another bureau or agency for direct response, the responsible official will notify the control office in writing.

C. An employee who receives an incorrectly routed FOIA request will promptly notify the control office and forward the request to that office for reassignment (see paragraph 2.4B of this Chapter).

D. The action office will notify the control office immediately whenever it has extended the time limit for responding to a request. The FOIA control number assigned to the request and the name of the requester should be provided, along with the justification for the extension.

E. Bureaus will advise the Departmental FOIA Officer whenever they receive a request involving multiple bureaus that may require coordination to ensure a uniform response by the Department.

# FREEDOM OF INFORMATION ACT LOG

## CY 1989

REQUEST NUMBER	NAME OF REQUESTER/ AFFILIATION	REMARKS/ SUBJECT	ACTION OFFICE	DATE REC'D	DATE LETTER	DATE DUE	DATE SIGNED	DISPOSITION		FEES			TE
								GRANTED	DENIED EXEMPT / OFC	DUE	REC'D	W	
89-0001	W. A. Wood W. A. Wood & Co	ABC Contract Copiers	PMO	1/5	12/15	1/20	1/19		4 PMO			A	
89-0002	McGrath, Mark Tree Life	Timbers Harvesting Referred by EPA	PEA	1/6	12/21	2/7	2/6	X				P	X
89-0003	Vones, A. L. Arlington, VA	FOIA Appeal Log	PMI	1/9	12/26	1/25	1/30	X				A	
89-0004	Brower, Tammy Stamps Unlimited	Mail Contract	PMO	1/23	1/5	2/6	2/8		4* PMO	18.60			
89-0005	Lyons, Eli Bethesda, MD	EEO Information	OEO	1/31	12/31	2/28	2/27		6 OEO	50.00	50.00	D	X

**KEY:**

W = Waiver  
A = Automatic  
P = Public Interest  
D = Denied

TE = Time Extension  
\* = Full Denial

OS - 118  
(12 / 87)

# OFFICE OF THE SECRETARY FREEDOM OF INFORMATION ACT REQUEST CONTROL FORM

FOIA Request Number
OS - <u>8</u> <u>99</u> -o <u>5</u> <u>4</u>
-----
Current Date
<u>0</u> <u>5</u> / <u>0</u> <u>3</u> / <u>8</u> <u>9</u>

Action Office for Direct Response PMI/DRD	Mail Stop 2242	Requester's Name Elizabeth Barnes	Statutory Due Date _0_ 5_ / _1_ 7_ / 8_ 9_
--	-------------------	--------------------------------------	---

**Instructions to Action Office:** To meet the statutory ten (10) workday response requirement, your response should be completed and dated no later than the "Statutory Due Date" shown above. Processing of this request must adhere to Office of the Secretary Administrative Handbook (OSHB). Number 36. Processing of Freedom of Information Act Requests.

The bottom section of this form, reflecting costs incurred in processing the request, must be completed. The completed form along with a copy of the response should be forwarded to the Freedom of Information Act Officer, Office of the Secretary, Office of Administrative Services (PMO). Mail Stop 5412, Main Interior Building.

## PROCESSING FEES (See OSHB No. 36, 7.11)

Service	cost
Clerical Search / Review (\$2.30 per quarter hour) .....	\$ .....
Professional / Managerial Search and Review (\$4.65 per quarter hour) .....	\$ 9.30
<b>Photocopy (\$ .13 per page)</b> .....	\$ 13.65
<b>Printing of Material (Actual Cost)</b> .....	\$ .....
Copies Requiring Special Handling (Actual Cost for Reproduction) .....	\$ .....
<b>Verification Certificates (\$ .25 per certificate)</b> .....	\$ .....
<b>Computerized Records</b> .....	\$ .....
<b>Postage (Actual Cost Exceeding 1st Class)</b> .....	\$ .....
<b>TOTAL FEE</b> .....	\$ 22.95

CHECK THIS BOX IF PROCESSING FEES HAVE BEEN WAIVED ☐

Response Prepared By Alice Long	Telephone -Number (202) 208-1000	Date 05-15-89
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Chapter 3 Processing Requests

3.1

**3.1 Inquiries for Information Versus Records.** The recipient of a request should make a determination as to whether it is subject to the FOIA (i.e., a request for records) or merely a request for information. If the requester seeks an answer to a specific question, or an explanation of policy, procedures, or a Departmental action, DOI is not required to process the request under the FOIA. However, the action office should handle the request in a timely manner.

**Examples:**

(1) A request that asks whether XYZ company has ever submitted a contract proposal in response to any DOI solicitation, is not subject to the FOIA.

(2) A request that asks for the dollar amount of DOI's contract with the XYZ company for copiers or what type of equipment is covered under the contract would be subject to the FOIA if disclosure of the contract document would answer the questions.

**3.2 Time Limits.**

A. **Initial Determinations.** An action office will respond to an initial FOIA request no later than 10 workdays after the appropriate control office receives it. The response must advise the requester of the records DOI intends to disclose or to withhold, the exemption(s) authorizing the withholding (including a citation or summary of each exemption), and provide sound grounds for withholding the document(s).

B. **Appeals.** After receiving an appeal, DOI has 20 workdays in which to issue a determination.

C. **Release of Records.** As long as the requester has been informed of the agency's decision with respect to disclosure or nondisclosure, the Department need not release the requested records within the time limits set forth in A and B, above. If the records to be disclosed are not provided with the initial response, they will be sent as soon as possible thereafter.

D. **Running of Basic Time Limit.** The 10-workday time limit begins to run when a request is received by the appropriate bureau or office either at headquarters or in the field. When it is necessary to forward a request to another installation for response, the time limit begins upon receipt at the installation in possession of the records; The running of the basic time limit may be delayed under the following conditions:

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3.2D(1)

(1) The requester has not stated a willingness to pay fees as high as those anticipated and has not sought and been granted a full fee waiver (see paragraph 4.9C of Chapter 4); or

(2) The requester has not made a required advance payment (see paragraph 4.9D of Chapter 4).

The 10 workdays will not begin until the request has been clarified or the records reasonably described and any fee issues resolved.

3.3 Extension of Time Limits.

A. Justification. In the following unusual circumstances, DOI may extend the time limits prescribed in paragraph 3.2 of this Chapter:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request:

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein.

B. Limitation. If necessary, more than one extension of time may be taken. However, the total extension of time must not exceed 10 workdays with respect to a particular request.

C. Notifying the Requester. If an extension is necessary, the responsible official will notify the control office and prepare a letter to the requester informing him/her of the reason for the extension (see A, above) and the anticipated date of the response (see Illustration 1 to this Chapter). The letter to the requester should be sent prior to the expiration of the basic time limit (the initial 10 workdays).

3.4 Describing the Requested Records.

A. The requester must describe the records sought in sufficient detail to enable an employee familiar with the subject area of the request to locate the records with a reasonable amount of effort.

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**3.4B**

B. When a request is overly broad in scope, unfocused, or involves an extremely voluminous amount of records or a burdensome search (e.g., "Send me any and all documents the Department has that reference or mention the XYZ Co. or any of its officers, employees, or consultants"), the action office should contact the requester to try to identify and clarify the records sought and to reformulate the request (see Illustration 2 to this Chapter). This includes explaining how the agency's records pertinent to the request are filed, indexed, grouped, etc., so that the requester understands how to narrow the request. The individual handling the request should work with the requester to:

- (1) Limit the scope of the request to specific components or geographical areas of a bureau or to a single bureau;
- (2) Define the subject matter;
- (3) Narrow the scope of the request to a certain timeframe: and
- (4) Clarify terms within the context of the request.

C. The 10-workday time limit will not start until D01 receives a request reasonably describing the records or clarifying the initial request.

### 3.5 Locating the Records.

A. Immediately upon receiving the initial request, the responsible official (see paragraph 1.5S of Chapter 1) will determine whether D01 has the records. If the agency does not have the records, the requester will be advised accordingly (see Illustration 3 to this Chapter).

B. If the official believes that records covered by the request are located at another D01 installation or another Federal agency, he/she will follow the procedures in paragraph 3.8 or 3.9 of this Chapter.

C. If the request involves the records of more than one office within the same bureau, the official will coordinate the request with the Bureau FOIA Officer or his/her counterpart in the field.

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**3.5D**

D. If the bureau has retired the records to a records center, the official will promptly locate the records and request their return to his/her custody or make other arrangements for them to be reviewed.

E. If the records cannot be located, the official will notify the requester in writing and send a copy of the letter to the Bureau FOIA Officer (see Illustration 3 to this Chapter). A notice to the requester that records cannot be found constitutes a denial under Departmental regulations; therefore, the letter will require a paragraph on appeal rights (see paragraph **3.16A(6)** of this Chapter).

F. If the request is unclear, the official will contact the requester for clarification. When it requires substantial clarification, DOI will ask the requester to submit an amended written request. The basic time limit does not begin until the clarification letter is received (see paragraph 3.4 of this Chapter).

**3.6 Reviewing the Records.**

A. The responsible official will make a detailed review of the requested records and consult interested offices before making a decision on the request (see paragraph **3.9A** of this Chapter).

B. The official will review the records and decide whether the information should be released or denied. He/she must consult the designated FOIA attorney prior to:

- (1) Withholding a requested record,
- (2) Releasing a requested record that is exempt from disclosure, or
- (3) Denying a fee waiver.

C. It is the policy of the Department to withhold information falling within an exemption only if:

- (1) Disclosure is prohibited by statute or Executive order, or
- (2) Sound grounds exist for invoking an exemption under the FOIA.

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3.7

3.7 Interim Response.

A.    To avoid unnecessary appeals and litigation, bureaus will make every effort to keep requesters apprised of the status of their requests. If a decision on a request has not been made within the given time limits or an extension thereof, a requester may treat the delay or lack of response as a denial and file an appeal or sue the Department. It is essential to communicate with the requester--this shows good faith on the part of the Department.

B.    When the action office is unable to respond in a timely manner, an interim response should be prepared. The letter should be brief, acknowledge receipt of the incoming correspondence, and advise the requester when he/she may expect a final response. The requester also will be advised of his/her right to treat the delay as a denial and appeal the matter (see Illustration 4 to this Chapter).

3.8 Records of Other Agencies.

A.    If DOI receives a request for records in its possession that originated with another Federal agency, the Department will refer the request to that agency unless--

(1) The record is of primary interest to the Department (the Department has primary interest in a record if it was developed or prepared pursuant to DOI regulations, directives or at its request);

(2) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure; or

(3) The originating agency is not subject to the Act.

B.    When the request is referred, the responsible official will:

(1) Inform the requester in writing that DOI is forwarding the request to another agency for response (see Illustration 5 to this Chapter), and

(2) Promptly send the request to the appropriate agency (see Illustrations 6 and 7 to this Chapter).



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**3.8C**

C.    In accordance with EO 12356 of April 2, 1982, National Security Information, requests for documents classified by another agency are to be referred to that agency for processing.

3.9 Intradepartmental Consultation and Referral.

A.    If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or are of substantial concern to another bureau, it will:

(1) Consult with that bureau before deciding whether to release or withhold the material; or

(2) Refer the request (or the relevant portion thereof) to the appropriate bureau for direct response (see Illustration 8 to this Chapter). Such referrals will be made expeditiously.

B.    If a request involves correspondence signed at the Deputy Assistant Secretary level or above, the appropriate Assistant Secretary's office and the FOIA attorney for that program area must be consulted. This applies even though the correspondence may have originated with a bureau/office (note exception in A, above).

C.    If a request is referred to another bureau or another installation within the same bureau (e.g., from headquarters to a field office), the requester will be advised in writing of the referral. The letter to the requester should include:

(1) The name and telephone number of a contact, and

(2) The mailing address of the responsible bureau/office.

D.    The action office will send a copy of any referral letter along with the original request to the appropriate control office.

3.10 Expedited Service.    DOI does not provide expedited service for FOIA requests. Requests are generally processed on a "First in, first out" basis: however, exceptions may be made in the following circumstances (see the DOJ FOIA Update, Summer 1983, Vol. IV., No. 3, p. 3):

A.    Whenever an individual's life or personal safety would be jeopardized by failure to act promptly, and

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3.10B

B. Whenever the requested records are needed in connection with a judicial or administrative proceeding and are critical to preserving the requester's "due process rights," assuming the information is not otherwise available.

3.11 Relationship of the FOIA and the Privacy Act.

A. When an individual requests records pertaining to himself/herself that are contained in a Privacy Act system of records and cites both the FOIA and the Privacy Act, the request will be handled so that the individual is granted the greatest access to his/her records that either Act provides. When an individual submits an FOIA request for records pertaining to himself/herself that are not covered by the Privacy Act, the request will be treated as any other FOIA request.

B. A request from an individual for access to his/her records that cites neither Act may be processed under both Acts (e.g., "I would like all the records the Department of the Interior has on me..."). However, in the event the request is not processed under DOI's FOIA/Privacy Act regulations, the requester may not be denied access to any information required to be disclosed pursuant to the statutes.

C. When a third party submits an FOIA request for information that is subject to the Privacy Act and the information is not required to be released under the FOIA, the material may not be disclosed without the prior written approval of the individual on whom the record is maintained. For example: "Send me all the records DOI has on my husband, Justin Case". Any employee who knowingly and willfully discloses information protected by the Privacy Act may be subject to criminal penalties.

D. The Privacy Act never prohibits disclosure of material that the FOIA requires to be released, such as the grade level and salary of a Federal employee (see paragraph 3.22A of this Chapter).

E. The Privacy Act, unlike the FOIA, only applies to U.S. citizens or lawfully admitted aliens.

F. In handling such combined FOIA/Privacy Act requests, the fee provisions and time limits applicable to the FOIA apply, except that with regard to those records that are subject to the Privacy Act, DOI only can charge the person who is the subject of the records for duplicating the material and not for search or review time.

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3.12

3.12 Preparing the Response Letter.

A.    General.

(1) Respond promptly to requests and telephone calls related to the FOIA.

(2) Strive to convey a helpful, responsive attitude by the tone of voice, style, and wording chosen.

(3) Use clear, plain language which can be understood by the recipient.

(4) Be courteous and sensitive to the needs of the public.

(5) Comply with the requirements in paragraph 3.14 of this Chapter.

B.    Content of Letter.

(1) Responses should open with a reference to the specific information requested, the date of the initial request, and the date of receipt if delayed. For example, "This responds to your January 7, 1989, Freedom of Information Act request (received in this office on February 1, 1989) in which you seek access to copies of travel vouchers for certain key officials."

(2) The name and telephone number of a contact familiar with the request should be included.

(3) If the records are not provided with the initial response, the requester should be advised of the circumstances of the delay and the date when he/she may expect to receive them.

(4) If the request involves records which may be located in several bureaus, the requester should be advised that the bureau is responding for records under its purview only (see Illustration 9 to this Chapter).

(5) Fees should be addressed even when the requester is not charged.

(a) The following language may be used when a fee is not charged:

(i) The fee incurred in responding to your request did not exceed \$15 and has, therefore, been waived.

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**3.12B(5)(a)(ii)**

(ii) We have reviewed your request and determined that disclosure of the requested information is in the public interest, therefore, all fees are waived.

(b) When a fee is to be charged, advise the requester as to how the fee is calculated. For example:

The fee for the enclosed documents is \$22.95,  
\$9.30 for search time and \$13.65 for photocopying.  
A breakdown of these costs is shown on the attached  
Bill for Collection.

See Illustration 2 to Chapter 4.

(c) If fees are applicable, provide explicit instructions to the requester for submission of payment or advise him/her that a bill will follow.

"A Bill for Collection is enclosed. Please make payment by check or money order clearly marked "FOIA Fee", payable to the "Department of the Interior (or name of the bureau or office)." The term United States or the initials "U.S." should not be included on the check or money order. Send the payment to the (insert title and address where payment is to be mailed). Your payment should be received within 30 days of the date of the Bill for Collection. Interest will be charged under the Debt Collection Act of 1982 (31 U.S.C. 3717) and implementing regulations (4 CFR 102.13) if the fee is not paid within 30 calendar days of the date on the Bill for Collection."

(d) The interest requirement does not apply if the requester is a State or local government. Other authorities will be used to collect outstanding fees. Consult with the appropriate budget/finance office for exact language to be used in these cases.

3.13 Signature Authority.

A. Final decisions on initial requests are made by the following officials:

(1) For requests to headquarters, the head of the bureau or an official whom the head of the bureau has designated in writing.

(2) For requests to field installations, the head of the installation or such higher authority as the head of the bureau may designate in writing.

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**3.13A(3)**

(3) For requests to the Office of the Secretary, the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has designated in writing (see 210 DM 1.1 and 212 DM 9.7).

B. Bureaus will ensure that officials responsible for making FOIA determinations have the expertise necessary to exercise sound judgment.

3.14 Action Office Responsibility. The office handling the request is responsible for:

A. Notifying the requester of the Department's intention to disclose or withhold the requested records within the time limits specified in paragraph 3.2 of this Chapter;

B. Ensuring that an adequate search is conducted and that any records responsive to the request are reviewed properly;

C. Consulting with appropriate offices, including the Office of the Solicitor (SOL), if a decision is made to release a record exempt from disclosure or a denial is involved:

D. Obtaining necessary concurrences;

E. Following up to make sure that legible copies of the records are sent to the requester if not sent with the initial response;

F. Keeping a record of information that has been released **or** withheld as a reference for future requests (to determine whether the material is in the public domain) and for any appeal filed:

G. Obtaining assurance of payment or advance payment as necessary and preparing the Bill for Collection, DI 1040, when it **is** not prepared by Finance (see paragraph 4.9 and Illustrations 3 through 5 to Chapter 4); and

H. Sending a copy of the response to any affected office.

Illustrations 10 and 11 to this Chapter provide an overview for responding to an FOIA request.

3.15 Initial Response--Granting Access. When the action office decides to release a requested record, it will notify the requester as to when and where the record is available for inspection or as the case may be, when and how copies will be provided. If fees are due, a statement regarding the fees and

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3.15

the procedures for payment is to be included in the initial response letter (see paragraph **3.12B(5)** of this Chapter).

3.16 Initial Response--Denying a Request in Part or Whole.

A. When the action office decides that all or part of a requested record should be withheld (even if one word is deleted), it will notify the requester in writing (see Illustration 12 to this Chapter). The denial letter will:

(1) Indicate the date of the initial request and the date DOI received the request if delayed:

(2) Briefly describe the requested records; -

(3) Describe the documents or parts withheld fully (if the records are voluminous, they may be categorized for description purposes), being careful not to reveal the contents of the information withheld;

(4) Include the specific exemption(s) and the sound grounds for withholding each part denied;

(5) State the name and title of the official who is responsible for denying the request, if it is someone other than the person who signs the letter (the names of any individuals consulted in the review process also may be included);

(6) Advise the requester of his/her right to appeal in writing to the Assistant Secretary - Policy, Management and Budget. A sample paragraph follows:

"You may appeal this partial (full) denial to the Assistant Secretary - Policy., Management and Budget no later than 20 workdays (after the date of this letter/after receipt of the requested records). Your appeal must be in writing and addressed to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, Department of the Interior, MS-2242, MIB, Washington, DC 20240. A copy of your original request and this denial letter should accompany the appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should also contain a brief statement of the reasons why you believe this initial decision to be in error."

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B. A decision denying a request for failure to reasonably describe requested records, for other procedural deficiency, or **because** requested records cannot be located will be in writing (see Illustration 3 to this Chapter) and will include:

(1) A -description of the basis of the decision;

(2) A list of the names and titles or positions of each person responsible (the names of any individuals consulted also may be included); and

(3) A statement that the matter may be appealed to the Assistant Secretary - Policy, Management and Budget (see A(6), above).

C. If the bureau fails to inform the requester of his/her appeal rights, the requester may sue the Department.

D. The Office of the Solicitor will be consulted whenever a decision is made to withhold a requested record, release a record that is exempt from disclosure, or to deny a fee waiver (see paragraph **3.6B** of this Chapter).

E. A copy of all denials will be sent to the Bureau FOIA Officer or the appropriate control office.

3.17 Deleted Portions. When a record contains both exempt and nonexempt material, any reasonably segregable part of an otherwise exempt document will be disclosed. When disclosing a record to a requester, the official will indicate all deletions clearly; it is a good practice to indicate which exemption is being used in the margin of the document--this avoids confusion. In the cover letter to the requester, describe in as much detail as possible the kind of material deleted, being careful not to reveal the information withheld. Deleting even one word constitutes a partial denial. Before disclosing a record, the official will note the parts withheld, either by marking the original or by keeping a page-by-page list.

3.18 Consulting with Submitters of Commercial and Financial Information.

A. Policy.

(1) If a requester seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal Government, the bureau processing

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the request will provide the submitter with notice of the request whenever -

(a) The submitter has designated the information as commercially or financially sensitive, or

(b) The bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing a notice in a place that is reasonably accessible.

(2) Notification is not required if:

(a) The bureau determines prior to giving notice, that the request for the record should be denied;

(b) The information has previously been lawfully published or officially made available to the public;

(c) Disclosure is required by a statute (other than the FOIA) or regulation (other than 43 CFR 2, Subpart B);

(d) Disclosure is clearly prohibited by a statute, as described in 43 CFR 2.13(c)(3);

(e) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter (if the submitter was specifically afforded an opportunity to make such a designation) unless DOI has substantial reason to believe that disclosure of the information would be competitively harmful;

(f) The designation of confidentiality made by the submitter is obviously frivolous; or

(g) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

B.    Procedures.

(1) If a bureau receives a request for records or information that an individual has submitted to the Government, the responsible official will telephone the submitter whenever possible and follow up in writing to:

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(a) Inform him/her that the bureau has received an **FOIA** request for information or records that he/she has provided (see Illustration 13 to this Chapter).

(b) Invite the submitter to provide a detailed statement of any objection to disclosure. The submitter's statement should explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement should also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(c) Inform the submitter that the bureau will consider his/her written recommendation if it receives it within a reasonable number of days (in most cases, not more than 10 workdays) after receipt of the agency's letter (the letter should be sent certified mail, return receipt requested). Depending on the circumstances, however, the bureau may at its discretion allow more time for the submitter to review the material.

(i) The official may wish to meet with the submitter to review the material or to discuss any problems.

(ii) If the submitter's statement is not received on time, the bureau should send the requester an interim response advising him/her of the reason for the delay.

(2) If the bureau decides to disclose any part of the information that the submitter has asked to be withheld, the responsible official will promptly:

(a) Telephone the submitter to inform him/her of **DOI's** decision, and:

(b) Confirm the telephone call with a letter sent certified mail, return receipt requested (see Illustration 14 to this Chapter), informing the submitter that the bureau will delay a reasonable number of days (in most cases, not more than 10 workdays) before disclosing the information (**a** copy will also be sent to the requester). The letter to the submitter will:

(i) Contain a complete copy of the material to be disclosed or will give the submitter an opportunity to review the material in **DOI's** offices;

(ii) Explain why his/her objections are not sustained;

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(iii) Include a disclosure date: and

(iv) Be sent for surnaming along with the bureau's letter of response and be dated and postmarked the same day as the letter to the requester (see Illustration 15 to this Chapter). The records will be mailed at a later date.

(3) If a claim of confidentiality has been found frivolous in accordance with 43 CFR 2.15(d) (4)(vi) and a determination is made to release the information without consulting the submitter, notify him/her of DOI's decision and the reasons **therefor** a reasonable number of days (in most cases, not more than 10 workdays) prior to the date on which disclosure is to be made.

(4) If, after an independent analysis, the bureau is in agreement with the submitter's position that all or a part of a record should be withheld, the responsible official will notify the submitter. In this event, the letter to the requester should state that the bureau's decision to withhold is based on a careful, objective analysis of the requested records and not merely on the fact that the submitter objected to disclosure.

(5) If a requester sues the Department to compel disclosure of the requested information, SOL will ensure that the submitter is notified promptly. If the submitter sues DOI to enjoin disclosure of the records, SOL also will ensure that the requester is notified promptly.

3.19 Sensitive Requests. After consulting with the bureau's Office of Public Affairs, the action office will notify the Special Assistant to the Secretary and Director of Public Affairs of any sensitive requests that may result in high visibility for the Department or the bureau. The action office is responsible for ensuring that the Special Assistant reviews and surnames all responses to such inquiries at headquarters. The bureau will designate an official at each field installation (preferably in the Office of Public Affairs) to monitor these requests (see paragraph **3.9A** of this Chapter).

3.20 Requests from Members of Congress.

A. Upon receipt of a request for records from a Member of Congress, bureaus should first determine whether the request is made under the authority of a congressional committee or subcommittee on a subject within its jurisdiction. If so, then the request falls within subsection (d) of the FOIA, and only an authorized claim of privilege may be used to justify nondisclosure. Any other request for information from a Member

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of Congress should be treated as an FOIA request (see paragraph 1.7A(2) of Chapter 1).

B. Before denying a request from a Member of Congress, the responsible official will consult with the Office of Congressional and Legislative Affairs and the designated FOIA attorney (see paragraphs 3.9A and 3.16D of this Chapter).

3.21 White House Records. If White House records are located in agency files that are responsive to an FOIA request, consult the Departmental FOIA Officer as they require special consideration.

3.22 Examples of Information Frequently Releasable Under the FOIA. The following information is generally, but not always, releasable under the FOIA.

A. Personnel-related information/records.

(1) Names of present and former employees.

(2) Present and past position titles and occupational series.

(3) Present and past grades.

(4) Present and past annual salary rates--including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials.-

(5) Other awards and honors received and membership in professional groups.

(6) Present and past duty stations.

(7) Position descriptions, identification of job elements and those performance standards (but not actual performance appraisals) the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

(8) Factors used in ranking job applicants.

(9) Post-graduate or technical education related to the employee's profession.

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(10) Prior employment in State or Federal Government positions **and in** the private sector when it pertains to an employee's duties.

(11) SF 171, Application for Federal Employment, for the successful candidate (sanitized of any exempt material--see paragraph 5.4F(7)(a) of Chapter 5).

(12) SF 50, Notification of Personnel Action (sanitized of any exempt material--see paragraph 5.4F(7)(a) of Chapter 5).

B.    Administrative Documents (Sanitized of any Exempt Material).

(1) Travel Vouchers.

(2) Invoices.

(3) FOIA request letters.

(4) Transmittal memoranda and letters.

(5) Names of Federal employees involved in union activities during working hours.

(6) Records about deceased persons, unless exemption 6 is applicable (see paragraph 5.4F(5) of Chapter 5).

C.    Contract Information.

(1) Best and final offer of the successful bidder.

(2) Prices charged the Government--what the Government pays for goods and services--what it costs to do business with the Government.

D.    Policy Documentation.

(1)    Final orders and opinions in administrative actions.

(2)    Documents representing final decisions of agency officials, including documents adopted or incorporated by reference in the final decision.

(3)    Official policy statements, interpretations, and guidelines that have been adopted by the agency.

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3.23 Requests for Records not yet Available. The FOIA only applies to records in existence at the time the request is made. However, when a bureau receives a request for records that may be available at some future time, as a courtesy, it may advise the requester that:

A. The Department will provide the requested records as they become available (specify a date, if possible), or

B. He/she may wish to resubmit the request at a later date (e.g., after June 30).

See Illustration 16 to this Chapter.

3.24 Receipt of Classified Material. Whenever classified documents are referred to DOI for review by another agency, the following procedures will apply.

A. Classified documents will be handled in accordance with 442 DM, National Security Information.

B. The documents will be hand-carried to the Enforcement and Security Management Division (**PPS-S**) for processing immediately. In cases where this is not practicable, contact the designated security officer or call PPS-S for guidance.

3.25 **Authenticating** and Attesting Copies. See 310 DM 10.

SAMPLE LETTER

EXTENSION OF 10-DAY TIME LIMIT

Mr. Tom Jones  
XYZ Company  
1234 Holly Lane  
Bethesda, MD 20814

Dear Mr. Jones:

This acknowledges your Freedom of Information Act request of September 1, 1989. We are taking a 10-day extension under 43 CFR 2.17(c) in order to properly process your request (insert one of the reasons below).

Reason for Time Extension:

- o Due to the need to search for, collect, and examine a voluminous amount of records.
- o Due to the need to search for and collect the requested records from another source.
- o Due to the need to consult with another agency or other components in the Department.

A final reply will be sent to you on or before October 5, 1989.

Sincerely,

Lillian Smith  
Contracting Officer  
Office of Construction  
Management

SAMPLE LETTER

CLARIFYING A VAGUE OR OVERLY BROAD REQUEST

ms. Noel Claus  
123 Candycane Lane  
Snowtown, AK 01010

Dear Ms. Claus:

This letter is in response to your Freedom of Information Act request of (date of request), regarding (subject).

Because of the broad and general nature of the subject of your request, we are unable to identify which records are being sought. Under our regulations (43 CFR 2.14(b)(2)), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request does not meet this requirement.

Please be more specific concerning the type of documents you are requesting within each program area or relative to each project. In addition, if such information is available, the request should include the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and timeframe for which you are seeking records have not been defined. It is unclear whether your request covers only records in headquarters or in **the Department** of the Interior's field offices as well.

We will not proceed further with your request until we receive additional clarification from you. If you have any questions, I can be reached at (telephone number).

Sincerely,

Alisha Holiday  
Management Analyst

**SAMPLE LETTER**

**RECORDS CANNOT BE LOCATED**

Ms. Shanda Lear  
1707 88th Street  
New York, NY 10128

Dear Ms. Lear:

This letter is in response to your Freedom of Information Act (FOIA) request of April 15, 1989, in which you seek access to two letters (dated November 3 and 10, 1988) from the Departmental FOIA Officer, Department of the Interior, to the Department of Justice concerning delinquent FOIA requesters. We have reviewed our files and were unable to locate any records responsive to your request.

Under 43 CFR 2.18, you may appeal this response by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Your appeal must be received no later than 20 workdays after the date of this letter. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and this letter, along with any information you have which leads you to believe the records do in fact exist, including where they might be found, if the location is known to you.

Sincerely,

William R. George  
Director, Office of Management  
Improvement



**SAMPLE LETTER**

**INTERIM RESPONSE - DELAY IN PROCESSING REQUEST**

Mrs. Jane Doe  
001 Capital Street, S.E.  
Washington, D.C. 20002

Dear Mrs. Doe:

This letter is in response to your Freedom of Information Act (FOIA) request of (date of request), regarding (subject of request).

Select the appropriate paragraph(s) below:

- 0 Because of the voluminous nature of your request, additional time is necessary to enable us to determine which records or portions thereof may be released. Accordingly, we anticipate a delay in providing you with our final response.
- 0 The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.
- 0 The (name of office processing the request) is unable to respond to your request within the time limits established by the **FOIA** due to a backlog of requests and other unforeseen circumstances. Please be assured, however, that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date. All requests are handled in chronological order based upon the date of receipt.
- 0 The records you requested are located at three of our field installations and at headquarters. The (name of responsible office) in Washington, D.C., will be coordinating the response since it has jurisdiction over these records. As a result, additional time is needed to search for, collect, and review the material.

- o In accordance with 43 CFR 2.15(d), the Department of the Interior is required to notify submitters of commercial and financial information when it receives an FOIA request for records they have submitted to the Government. Two of the submitters we contacted with regard to your request have taken longer than anticipated to review their material. We expect to hear from them by (estimated date) and a decision on your request will be forthcoming.

The bureau expects to complete its response to you by (specify date).

You have a right to treat this delay as a denial of your request. You may appeal this matter by writing to: The Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. A copy of your initial request should accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter and it must be received no later than 20 workdays after the date of this letter. We hope, however, that you will defer action until a decision has been reached on your initial request.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, contact (name and telephone number).

Sincerely,

Stewart Johnson  
Departmental FOIA Officer

SAMPLE LETTER

REFERRAL TO ANOTHER AGENCY  
(Letter to Agency)

Ms. Barbara Goss  
FOIA Coordinator  
Room 400  
Administration Building  
Department of Agriculture  
Washington, D.C. 20250

Dear Ms. Goss:

Enclosed is a Freedom of Information Act request from Mary Allen that you may be able to answer. We have advised Ms. Allen that she will receive a response directly from your office.

Sincerely,

Fred Smith  
FOIA Coordinator for the  
Office of the Secretary

Enclosure

SAMPLE LETTER  
REFERRAL TO ANOTHER AGENCY  
(Letter to Requester)

Ms. Mary Allen  
P.O. Box 7775  
Andrews, NC 28901

Dear Ms. Allen:

It has been determined that the records described in your February 13, 1989, Freedom of Information Act (FOIA) request may be located in the Department of Agriculture. Therefore, we have forwarded your request to that agency which will provide you with a direct response. If there is a need for you to contact the Department, the mailing address is:

Ms. Barbara Goss  
FOIA Coordinator  
Room 400  
Administration Building  
Department of Agriculture  
Washington D.C. 20250  
202-123-4567

Sincerely,

Fred Smith  
FOIA Coordinator for the  
Office of the Secretary

SAMPLE LETTER

REFERRAL OF RECORDS

Ms. Barbara Goss  
FOIA Coordinator  
Administration Building  
Department of Agriculture  
Washington, D.C. 20250

Dear Ms. **Goss**:

While processing a Freedom of Information Act request from Mary Allen, dated February 13, 1989, the Department of the Interior located three documents that originated in your agency (see the enclosed). We have advised Ms. Allen that she will receive a direct response from your office.

Sincerely,

Fred Smith  
**FOIA** Coordinator for the  
Office of the Secretary

Enclosures

SAMPLE LETTER

REFERRAL TO ANOTHER BUREAU

Mr. Mitch Demiens  
President  
Indian Conference, Inc.  
1709 Second Avenue  
Fairbanks, AK 99701-4897

Dear Mr. Demiens:

This letter is in response to your Freedom of Information Act (FOIA) request of May 12, 1989, in which you seek access to records concerning the Indian Child Welfare Act program. We have forwarded your request to the Bureau of Indian Affairs which will provide you with a direct response. If there is a need for you to contact the Bureau, the mailing address is:

Mr. Casey Jones  
FOIA Coordinator  
Bureau of Indian Affairs (DOI)  
MS-337, SIB  
Washington, D.C. 20245  
202-208-3555

Sincerely,

Fred Smith  
FOIA Coordinator for the  
Office of the Secretary

cc: Casey Jones (BIA)

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New

SAMPLE LETTER  
DECENTRALIZED FOIA PROGRAM

Mr. Samuel Kaye  
Attorney  
Society for a Greener America  
1007 15th Street  
New York, NY 10001

Dear Mr. Kaye:

This is in response to your Freedom of Information Act (FOIA) request of May 16, 1989, in which you seek access to records related to a series of meetings which were held during the month of August 1988, involving the Society for a Greener America and several bureau officials.

The Department of the Interior (DOI) has a decentralized FOIA program which means that each bureau is responsible for responding to FOIA requests for its documents. Therefore, in accordance with DOI's regulations (43 CFR 2.15(a)), the Office of the Secretary will be responding for records under its purview only. If you are interested in records that may be located at another bureau within DOI, you must contact that bureau directly. We are enclosing a list of the Department's FOIA Officers for your information and use in making such inquiries.

Sincerely,

Fred Smith  
FOIA Coordinator for the  
Office of the Secretary

Enclosure

CHECKLIST FOR RESPONDING TO AN FOIA REQUEST

1. Know the Department's regulations.
  - A. DOI has its own regulations on the FOIA and can require that requesters follow them.
  - B. Apply regulations fairly.
2. Read the request.
  - A. Is it a request for records (i.e., an FOIA request) or a request for information (i.e., a public inquiry)?
  - B. Disregard **labels**-- "Under the provisions of the Privacy Act, I want a copy of Jim Smith's SF-171." Don't let the requester mislead you about which act applies. A third party request for an individual's record should be processed under the FOIA, not the Privacy Act.
3. Read the request again.
  - A. Does it reasonably describe the record(s) sought? That is, do you know what the requester wants? Do you know where to go to get the records?
  - B. How broadly or narrowly should you interpret the request?
  - C. Would discussion with the requester help to define, clarify, or narrow the scope of the request?
4. Identify and locate the records.
  - A. Do the records exist? Are they personal or agency records?
  - B. Are the records in the agency's possession and control?
  - C. Should another agency be consulted and/or deferred to?
  - D. Was your search for the records adequate and sufficient to ensure that all records within the scope of the request were identified and located?



5. Resolve questions about fees with the requester.
  - A.. Has the 'requester indicated a willingness to pay the cost of searching for, reviewing, and copying the records?
  - B. Has the requester asked for a waiver? Will disclosure of the material contribute significantly to an understanding of the operations or activities of the Government? Does the requester have a commercial interest that would be furthered by disclosure of the requested information?
  - C. Is collection of the fee economically feasible (\$15 or under)? That is, would the cost of collection be greater than the fee itself?
  - D. Is prepayment or assurance of payment required?
6. Review the records.
  - A. If necessary, duplicate the records so that you have a working copy in the file.
  - B. Are there exempt records or portions of records?
  - C. Does the bureau (office) want to make a discretionary release of exempt information?
7. Consult with the designated **FOIA** attorney before denying a requested record, releasing a record that is exempt from disclosure, or denying a fee waiver.
8. Prepare the records for disclosure/nondisclosure, segregating exempt records or portions of records from nonexempt portions.
  - A. Edit and excise.
  - B. Duplicate-- one copy to be released, one readable excised copy to be retained for file purposes and in case of an appeal.
9. Prepare letter to requester identifying:
  - A. When and where records will be available for inspection or when and how copies will be provided if they are not enclosed:

- B. Records or portions withheld and the authority for withholding them (applicable exemption(s));
  - C. Names and titles or positions of each person responsible for the denial (the names of any individuals consulted in the review process also may be included); and
  - D. Procedures and time limits for appealing the denial to a higher authority within the Department, including the name, title, or position and address of the\_ FOIA Appeals Officer.
10. Prepare the Bill for Collection Form--DI 1040 (if a fee has been assessed).
11. Issue the response, enclosing records to be disclosed and the Bill for Collection Form (if appropriate).
- A. Maintain one copy of the response and bill (if appropriate) for the action office file.
  - B. Send one copy of the bill--the Accounting Copy--to the bureau's finance office.
  - C. Maintain a copy of the withheld records or a list which identifies the records to be made available to the Office of the Solicitor in the event of an appeal.

NOTE: When you work on an FOIA request, always assume that it may result in litigation. Keep good records--a telephone log or a written record of all conversations. Communicate with the requester--keep him/her advised of the status of the request.

ELEMENTS OF AN FOIA REQUEST AND THE RESPONSE LETTER

Elements of Request Letter

1. FOIA cited in initial request.
2. Reasonable description of record.
3. Letter addressed to appropriate office.
4. Assumption of financial liability.

Steps in Drafting Response

1. Include the date of the request, the date of receipt, if delayed, and the nature of the request.
2. Determine if record will be released, in whole or in part--consult with the designated FOIA attorney.
3. Indicate when and where records will be available.
4. Cite exemption for withholding.
5. Justify denial.
6. Notify requester of charges.
7. Notify requester of right to appeal when fee waiver or record is denied, when record cannot be located, when request fails to reasonably describe records, or for another procedural deficiency.
8. Include name and title of person(s) responsible for denial and any individual(s) consulted (optional).

SAMPLE LETTER

FOIA DENIAL

Mr. John Doe  
1234 Main Street  
Anytown, USA 00000

Dear Mr. Doe:

This responds to your letter of \_\_\_\_\_ (1) \_\_\_\_\_, in which you requested under the Freedom of Information Act (FOIA) copies of certain documents relating to \_\_\_\_\_ (2) \_\_\_\_\_

---

We have examined the files under our jurisdiction carefully, and are enclosing most of the information you requested.

Select one of the paragraphs below:

- (3)      0      Certain documents (identify specific material or records withheld), however, are being withheld because they reflect the personal opinions, recommendations, and advice of staff members, and were used to arrive at a final agency decision. Disclosure of such material would inhibit the open and candid expression of such views in similar future deliberations, could confuse the public as to the official agency position on an issue, and have a detrimental effect on our decisionmaking process. Therefore, sound grounds exist for withholding the materials pursuant to exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) which permits an agency to withhold "interagency or intra-agency memorandums or letters that would not be available by law to a party ... in litigation with the agency."
- (4)      0      The documents you requested are enclosed, however, the home addresses, telephone numbers, and social security numbers of the employees have been deleted. The Department maintains that an individual has a personal privacy interest in this information. We do not perceive, nor have you enunciated, any public interest that would be served in disclosing this data which would outweigh the privacy interest of the subject individuals. Therefore, sound grounds exist for withholding the information pursuant to exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) which permits an agency

to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

- (5) In addition to myself, the officials responsible for this partial denial are (name(s), title(s), and organization(s) of official(s)). (The names of any individuals consulted in the review process also may be included.)

You may appeal this partial denial to:

- (6) Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary -  
Policy, Management and Budget  
U.S. Department of the Interior  
MS-2242, MIB  
Washington, D.C. 20240 .

Your appeal must be in writing and received no later than 20 workdays after the date of this letter or 20 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

- (7) The fee incurred in responding to your request was minimal and has, therefore, been waived.
- (8) If you have any questions, please call (name and telephone number of someone familiar with the request).

Sincerely,

Director  
(Name of bureau/office)

Enclosures

- (1) Date of request
- (2) Description of requested records
- (3) Sound grounds
- (4) Denial authority
- (5) Denial officials
- (6) Appeal procedure
- (7) Fees
- (8) Contact
- (9) Date letter received (Include if request delayed)

SAMPLE LETTER

CONSULTATION WITH THE SUBMITTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. **Bea** Good  
Perry Corporation  
5678 Market Street  
Richland, VA 01010

Dear Ms. Good:

Pursuant to the Freedom of Information Act (5 U.S.C. 552), Ally Corporation of Newark, NJ, has requested a copy of your proposal and any related correspondence pertinent to the award of Contract No. DOI-007 (letter dated January 2, 1989, enclosed).

To assist us in determining whether data should be released, we need your firm's views on which items, if any, are protected from disclosure by exemption 4 (5 U.S.C. 552(b)(4)). If you recommend that information be withheld, please provide us with the following:

- (1) The data to be withheld and the basis on which the information is exempt under the FOIA;
- (2) A detailed explanation of how disclosure would be competitively harmful to your company; and
- (3) A certification that the **information** is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

Please review all the materials that were submitted with your proposal and submit any recommendations you may have concerning disclosure of the information within ten days from the date of receipt of this letter. If you have any questions regarding this matter, contact Joe Williams of my staff at 202-123-3456.

Sincerely,

Roy L. Baker  
Chief, Division of Contracts

Enclosures

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SAMPLE LETTER

NOTIFYING SUBMITTER OF AGENCY'S INTENT TO RELEASE DOCUMENTS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MS. **Bea** Good  
Perry Corporation  
5678 Market Street  
Richland, VA 01010

Dear Ms. Good:

Thank you for your letter of January 19, 1989, in which you objected to the Department of the Interior's disclosure of Perry Corporation's contract proposal and related correspondence for Contract No. DOI-007.

After considering your comments, and thoroughly reviewing your proposal and the related correspondence, we plan on releasing the following information for the reasons discussed below.

1. Unit Prices - Disclosure of the unit prices is consistent with the fundamental purpose of the Freedom of Information Act (FOIA)--to ensure public access to Government records. Adequate information enables the public to evaluate the wisdom and efficiency of Federal programs and expenditures. To sufficiently evaluate the cost efficiency to the Government of this contract, unit prices must be disclosed. In addition, the Federal Acquisition Regulation (FAR) 15.1001(c) states that, with limited exceptions, the contracting officer must notify the unsuccessful offerors of unit prices of each award. Further, the disclosure of prices charged the Government is the cost of doing business with the Government and, as such, is a matter of public record. Finally, disclosure is consistent with current case law.

2. Name of the President/CEO of the Company - Since Perry Corporation is a publicly-owned company, this information is published in the company's annual report. Therefore, since it is already a matter of public record, we feel that the information is releasable under the FOIA.

3. Government Contracts and Information Available to the Public - The list of Government contracts previously awarded to the company, various sales brochures, and the annual report

are a matter of public record, and thus releasable under the FOIA.

We do not believe that release of this information will reveal confidential commercial or financial information or cause Perry Corporation substantial competitive harm.

The Department plans to release this information (copies enclosed) to the requester ten workdays from your receipt of this letter.

Sincerely,

Roy L. Baker  
Chief, Division of Contracts

Enclosures



## SAMPLE LETTER

RESPONSE TO REQUESTER - RELEASE OVER OBJECTION OF SUBMITTER  
(Release of Documents Delayed)

Mr. James Sullivan  
Ally Corporation  
10 North Chestnut Street  
Newark, NJ

Dear Mr. Sullivan:

This letter is in response to your Freedom of Information Act (**FOIA**) request of January 2, 1989, in which you seek access to records concerning Perry Corporation.

The requested information is enclosed except as follows:

1. Information concerning the qualifications, skills, educational background and past experience of the company's employees. Release of this data could encourage corporate raiding and would be detrimental to the internal operations and productivity of the company (Items 1-10).

2. Cost and financial data and the competitive pricing approaches of the contractor. Release of this information would reveal the contractor's internal operations and business practices, thereby diminishing its competitive abilities. In addition, release could render future negotiations difficult if offerors become reluctant to furnish such information for fear of disclosure by the Government (Items 20-30).

3. Certain technical and commercial data describing the company's equipment, and internal operating procedures, and the names and telephone numbers and other information concerning its non-Government clients for the same reasons cited above (Items 41-50).

The fourth exemption under the FOIA protects from mandatory disclosure "matters that are commercial or financial information obtained from a person and privileged or confidential." It is designed to protect the interests of both the Government and the submitter of the information. The test for determining whether commercial or financial information is confidential is dependent upon whether disclosure is likely to have either of two effects: (1) impair the ability of the Government to obtain information

in the future, or (2) cause substantial competitive harm to the submitter of the information. Therefore, we believe sound grounds exist for withholding the above information pursuant to exemption 4 of the **FOIA (5 U.S.C. 552(b)(4))**.

You are advised that the submitter (Perry Corporation) has objected to the release of some of the information contained in its contract. However, after a thorough review, the Department of the Interior has decided to disclose some of this data. It will be released no sooner than ten workdays from Perry's receipt of our determination to disclose the information.

The fee incurred in processing your request was minimal and has therefore been waived under 43 CFR **2.20(a)(2)**.

You have the right to appeal this partial denial with the Department. Your appeal should be in writing and should be addressed to: the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary - Policy, Management and Budget, U.S. Department of the Interior, MS-2242, MIB, Washington, D.C. 20240. Any such appeal must be received no later than 20 workdays after the date of this letter or 20 workdays after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

If you have any additional questions regarding this matter, contact Joe Williams of my staff at 123-3456.

Sincerely,

Rose Power  
Director, Office of  
Procurement

Enclosures

**SAMPLE LETTER**

**RECORDS NOT AVAILABLE AT THIS TIME**

Mr. Joe Blow  
555 Market Street  
Anytown, USA 00000

Dear Mr. Blow:

This is in response to your Freedom of Information Act request of (date of request), regarding (subject of request).

In accordance with the Department of the Interior's regulations (43 CFR 2.14(c)), the requirement that records be made available to the public only applies to records in existence at the time the request is made. It imposes no obligation on the Department to place the requester's name on a mailing list for automatic receipt of certain kinds of records as they become available.

The documents you requested do not exist at the present time.  
(Insert one of the paragraphs below.)

- 0 However, we anticipate that we may be able to provide you with the records by (specify a date). We will advise you when this material becomes available.
- 0 However, we anticipate that the records may be available after (specify a date). You may wish to resubmit your request at that time.

Should you desire any additional information, please contact (name and telephone number of contact).

Sincerely,

Fred Smith  
FOIA Coordinator for the  
Office of the Secretary

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Chapter 4 Fees and Fee Waivers

4.1

4.1 Scope. This Chapter sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of D01 records.

4.2 Authority. Under the FOIA, D01 is authorized to charge fees to recover the direct costs of searching for, duplicating, and in the case of commercial-use requesters, reviewing documents to respond to an FOIA request.

4.3 Policy.

A. Unless waived, fees for responding to FOIA requests will be charged in accordance with the provisions of 43 CFR 2.20 and 43 CFR Part 2, Appendix A.

B. DOI will not charge the requester if the fee is \$15 or less, as the cost of collection would be greater than the fee.

C. Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

4.4 Fee Schedule. The following uniform fee schedule applies to all constituent units of the Department (see 43 CFR Part 2, Appendix A). The duplicating fees provided in the schedule are also applicable to requests processed under the, Privacy Act.

A. Review and Search Fees.

Manual searches and reviews by clerical personnel.	\$2.30 per quarter hour or fraction thereof.
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Manual searches and reviews by professional or managerial personnel in cases where clerical staff would not be able to locate or review the records.	\$4.65 per quarter hour or fraction thereof.
---	--

B. Computerized Records. Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with the following criteria:

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**4.4B(1)**

(1) Costs for processing a data request will be calculated using the same standard direct costs charged to other users of the facility, and/or as specified in the user's manual or handbook published by the computer center in which the work will be performed.

(2) An itemized listing of operations required to process the job will be prepared (i.e., time for central processing unit, input/output remote terminal, storage, plotters, printing, tape/disc mounting, etc.) with related associated costs applicable to each operation.

(3) Material cost (i.e., paper, disks, tape, etc.) will be calculated using the latest acquisition price paid by the facility.

(4) ADP facility managers will ensure that all cost estimates are accurate, and if challenged, be prepared to substantiate that the rates are not higher than those charged to other users of the facility for similar work. Upon request, an itemized listing of operations and associated costs for processing the job may be furnished to members of the public.

(5) Requesters entitled to two hours of free search time under 43 CFR 2.20(e) will not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

C. Reproduction Fees.

Pages no larger than 8 1/2 by 14 inches, when reproduced by standard office copying machines	\$0.13 per page
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Pages over 8 1/2 by 14 inches.	Direct cost of reproduction to <b>DOI.</b>
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Documents requiring special handling.	Direct cost of reproduction to <b>DOI.</b>
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D. Special Services.

(1) Certification. For each certificate of verification attached to authenticated copies of records furnished to the public, the charge will be \$0.25.

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Chapter 4 Fees and Fee Waivers

4.4D(2)

(2) Postage/Mailing Costs. Mailing charges may be added for services (such as Express Mail) that exceed the cost of First-Class postage.

(3) Other Services. When a response to a request requires services or materials other than those described in this schedule, the direct cost of such service or materials to the Government may be charged, but only if the requester has been notified of such cost before it is incurred.

4.5 Categories of Requesters. There are four categories of requesters: Commercial-use; educational and noncommercial scientific institutions; news media (including freelance journalists); and all others (see paragraph 1.5 of Chapter 1 for definitions). The fees set forth in paragraph 4.4 of this Chapter apply with the following exceptions:

A. Educational/noncommercial scientific institutions and the news media (including qualified freelance journalists) are charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies or the equivalent cost thereof if the records are in some other form) of duplication at no cost. The following are examples of how these fees are calculated.

(1) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be \$6.50. This amount would not be billed because it is less than \$15. See paragraph 4.3B of this Chapter.

(2) A request that results in 350 pages of material. The requester in this case would be charged \$32.50.

B. Noncommercial requesters who are not included in A, above, are entitled to the first 100 pages (paper copies or the equivalent cost thereof if the records are in some other form) of duplication at no cost and 2 hours of search time without charge (see A(1) and (2), above).

C. Commercial-use requesters are charged for document search, review, and duplication. They are not entitled to any automatic free search or duplication costs.

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Chapter 4 Fees and Fee Waivers

4.6

4.6 Determining Category of Requester.

A. DO1 may ask the requester to provide additional information at any time to determine what fee category he/she falls under (see Illustration 6 to this Chapter). This applies to all requesters.

B. The requester should be contacted promptly when clarification is required.

4.7 Searches.

A. When appropriate, DO1 may charge for time spent in the following activities (see paragraph 4.4 of this Chapter for applicable fees):

(1) Time spent in trying to locate DO1 records which come within the scope of the request, whether documents responsive to the request are located or not; and

(2) Direct costs involving the use of computer time to locate and extract requested records.

B. DO1 will not charge for the time spent in monitoring a requester's inspection of releasable records.

4.8 Reviews.

A. When appropriate, DO1 may charge for time spent in the following activities (see paragraph 4.4 of this Chapter for applicable fees):

(1) Time spent in examining a requested record to determine whether the record is permitted to be withheld in whole or in part; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

B. DO1 will not charge for the time spent in resolving legal and policy issues regarding the application of exemptions.

C. DO1 may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

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4.8D

D. DO1 will charge only commercial-use requesters for review time.

4.9 Administrative Actions to Improve Assessment and Collection of Fees.

A. Billing Procedures. The official processing a request that requires the collection of fees will prepare a Bill for Collection, DI 1040 (see Illustration 2 to this Chapter).

(1) One copy is sent to the requester along with the agency's response. The response to the requester is to include a statement concerning FOIA processing fees (see paragraph 3.12B(5) of Chapter 3).

(2) The Accounting Copy of the form is sent to the bureau's budget/finance/accounting office.

(3) Any payment received will be forwarded, along with a copy of the DI 1040, to the appropriate finance office.

B. Form of Payment. Payment is to be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. Where appropriate, a certified check may be required.

C. Notice of Anticipated Fees.

(1) Unless the requester has been granted a fee waiver or has previously agreed to pay fees as high as those anticipated by the Department, or if the fee is negligible, the official will promptly notify him/her of the estimated cost and obtain written assurance of payment (see Illustration 3 to this Chapter).

(2) The official also should give the requester an opportunity to modify his/her request at that time to reduce the fee.

(3) DO1 will not start processing the request until the requester agrees to pay the estimated fee.

D. Advance Payment.

(1) Where it is anticipated that FOIA fees are likely to exceed \$250 and the requester does not have a history of prompt payment of FOIA fees, the Department may require prepayment of the entire amount before it will begin processing the request. The Department will notify the requester that prepayment is due and at the same time provide him/her with an



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opportunity to **modify** the request to reduce the fee (see Illustration 5 to this Chapter).

(2) Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the Department will--

(a) Require the requester to pay the full amount owed plus any applicable interest penalties as provided in E, below, and to make an advance payment of the full amount of the estimated fee (see Illustration 4 to this Chapter), or

(b) Demonstrate that he/she has, in fact, paid the fee.

(3) The Department will not start processing the request until the above issues are resolved.

E. Charging Interest. The response to the requester or the bill for collection will include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations in 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the billing. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 will be used, as appropriate, to collect the fees (see 4 CFR Parts **101-105**).

4.10 Waiver of Fees.

A. Bureaus and offices will provide documents without charge or at a reduced charge if disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

B. The following factors should be considered in determining whether disclosure of information is likely to contribute significantly to public understanding of the operations or activities of the Government:

(1) Does the record concern the operations or activities of the Government? Records concern the operations or activities of the Government if they relate to or will illuminate

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the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the Government and submitted to or obtained by the Department may relate to the operations and activities of the Government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement, or other activities that involve private entities.

(2) If a record concerns the operations or activities of the Government, is its disclosure likely to contribute to public understanding of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. For the purpose of releasing a document, the identity of the requester is generally irrelevant (see discussion of the Reporters Committee case and exemptions 6 and 7 in Chapter 5); however, it is an important factor in determining whether a fee waiver is appropriate. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of Government operations or activities? Is the requested information sought by the requester because it may be informative on Government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on Government operations or activities?

(3) If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise

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from disclosure of information already in the public domain because it **has**, for example, previously been published or is routinely available to the general public in a public reading room.

C. The following factors should be considered in determining whether disclosure is primarily in the commercial interest of the requester:

(1) Does the requester have a commercial interest that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. Not only profitmaking corporations, but also individuals or other organizations may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(2) If the requester has a commercial interest, will disclosure be primarily in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interest.

D. DOI may ask the requester to furnish additional information to determine whether a fee waiver is in the public interest (see Illustration 7 to this Chapter).

E. The Department will not start processing a request until the fee waiver issue has been resolved, unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

**4.11 Reducing the Fee.** Under the FOIA and **DOI's** regulations, fees may be reduced (in contrast to a total fee waiver) when release of some of the records may be in the public interest. The criteria for a reduction in fees are the same as those for a total fee waiver.

A. A fee reduction may be appropriate when it is determined that disclosure of only some of the requested records would be likely to contribute significantly to public understanding of the operations or activities of the Government, and when disclosure would not be primarily in the commercial interest of the requester.

B. Fees in these cases should be prorated based on the percentage of records that meets the fee waiver criteria.

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Chapter 4 Fees and Fee Waivers

4.11B

Where the documents may be segregated, calculate the exact cost of **processing those** records which do not qualify for a fee waiver.

4.12 Notice of Denial. If a request for a fee waiver or reduction is denied, the action office will--

A. Send the requester a letter (see Illustration 1 to this Chapter) containing the following:

(1) A statement justifying why the waiver or reduction has been denied.

(2) A listing of the names and titles or positions of persons responsible for the denial. The names and titles of persons consulted also may be included even though they are not directly responsible for the denial.

(3) A statement that the denial may be appealed to the Assistant Secretary--Policy, Management and Budget and a description of the appeal procedures set forth in 43 CFR 2.18.

B. Send a copy of the denial letter to the Bureau FOIA Officer and the appropriate control office.

4.13 Discretionary Waivers. Fees may be waived at the discretion of the bureau if a request involves:

A. Furnishing unauthenticated copies of documents reproduced for gratuitous distribution:

B. Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

C. Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

D. Furnishing records to donors with respect to their gifts:

E. Furnishing records to individuals or private nonprofit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

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Chapter 4 Fees and Fee Waivers

**4.13F**

F. Furnishing records to State, local, and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to DOI and to do so will help to accomplish the work of the Department;

G. Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records;

H. Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees); or

I. Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he/she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims, or persons insured by the Government).

Note: Be consistent!

SAMPLE LETTER  
FEE WAIVER DENIAL

Mr. Jerry Cook  
Silva, Cook, and Grant  
Attorneys at Law  
One Maryland Street  
Baltimore, MD 21212

Dear Mr. Cook:

This is in response to your Freedom of Information Act request of February 7, 1989, in which you seek access to certain records relating to Gas Lease No. 00-12-777.

In your letter you also sought a fee waiver since the information was being requested in connection with an action pending in the Superior Court of the State of Maryland entitled Norwood v. Glowmino Corp. The Department of the Interior's regulations state that "... documents shall be furnished without charge . . . if disclosure of the information is in the public interest because it (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) Is not primarily in the commercial interest of the requester." Your request did not contain sufficient evidence to support these criteria. Therefore, we are denying your request for a waiver pursuant to 43 CFR 2.21(a).

In addition to the undersigned, the official responsible for this denial is Thomas B. Jones, Associate Solicitor, Division of Energy and Resources.

Under 43 CFR 2.18, you have the right to appeal this decision to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary -  
Policy, Management and Budget  
U.S. Department of the Interior  
MS-2242, MIB  
Washington, D.C. 20240

Your appeal must be in writing and must be received no later than 20 workdays from the date of this letter. The appeal must be accompanied by a copy of your original request and this denial letter. To expedite the appellate process and to ensure full consideration of your appeal, your letter should contain a brief statement of the reasons why you believe this decision is in

error. **The** appeal should be marked "FREEDOM **OF** INFORMATION APPEAL" both on the envelope and the face of the letter.

We estimate that it will cost \$18.60 to search for and review the requested records and \$130 to duplicate the material (1000 pages at **\$.13** per page) for a total of \$148.60. If you still wish to obtain these documents, please provide written assurance of your willingness to pay the full amount to (name of individual and address where assurance is to be sent). You may wish to modify your request at this time to reduce the fee. We will not start processing your request until this written assurance has been received.

If you have any questions concerning this matter, I may be reached at 202-208-0000.

Sincerely,

James R. West  
Associate Director for  
Offshore Minerals Management

U. S. GOVERNMENT PRINTING OFFICE: 1983-399-220

DI-1040  
Revised  
(Aug. 1973)

SAMPLE  
BILL FOR COLLECTION

Bill No. OS-89-054

Make Remittance Payable To: Department of the Interior  
office of the Secretary  
(Bureau or Office)

Date 5-15-89

Mail Payment To: The Office Preparing the Response  
(Address)

PAYER:

Ms. Elizabeth Barnes  
3412 Dale Street  
Silver Spring, MD 20906

Please detach too portion of  
this bill and return with  
remittance.

Amount of Payment \$ 22.95

Date	DESCRIPTION	Quantity	Unit	Cost	Per	Amount	
			Cost				
5-15-89	FOIA Fee					\$ 22	95
	Photocopying Cost (1st 100 pages not charged) 105 pages at \$.13 per/page			\$ 13.65			
	Professional Search (1st 2 hrs. not charged) 1/2 hr. at \$4.65 per/qt. hr.			\$ 9.30			
SAMPLE							
AMOUNT DUE THIS BILL,						\$ 22	95

NOTE: A receipt will be issued for all cash remittances and for all other remittances when required by applicable procedures. Failure to receive a receipt for cash payment should be promptly reported to the bureau or office shown above.

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New



U. S. GOVERNMENT PRINTING OFFICE: 1983-399-220

DI-1040  
Revised  
(Aug. 1973)

SAMPLE  
BILL FOR COLLECTION

Bill No. OS-89-054

Make Remittance Payable To: Department of the Interior  
Office of the Secretary  
(Bureau or Office)

Date 5-15-89

Mail Payment To: The Office Preparing the Response  
(Address)

PAYER:

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3412 Dale Street  
Silver Spring, MD 20906

Please detach top portion of  
this bill and return with  
remittance.

Amount of Payment \$ 22.95

Date	DESCRIPTION	Quantity	Unit	Per	Amount	
			Cost			
5-15-89	FOIA Fee				\$ 22	15
	Photocopying Cost (1st 100 pages not charged) 105 pages at \$.13 per/page				\$ 13.65	
	Professional Search (1st 2 hrs. not charged) 1/2 hr. at \$4.65 per/qt. hr.				\$ 9.30	
SAMPLE						
AMOUNT DUE THIS BILL,					\$ 22	95

NOTE: Receipt will be issued for all cash remittances and for all other remittances when required by applicable procedures. Failure to receive a receipt for cash payment should be promptly reported to the bureau or office shown above.

SAMPLE LETTER  
ASSURANCE OF PAYMENT

Mr. J. R. Jones  
Consultant  
J. R. Jones Company  
2200 Maryland Road  
Baltimore, MD 21210

Dear Mr. Jones:

This letter is in response to your Freedom of Information Act request, dated June 1, 1989, for a copy of the Department of the Interior's contract with B and B, Inc.

The estimated fee for the documents you have requested is \$148.60, calculated as follows: 1,000 pages of duplication at \$.13 per page and 1 hour of search and review time at \$18.60 per hour. Prepayment is not requested at this time, however, please furnish written assurance of your willingness to pay the full amount for the documents to (insert name of individual and address where assurance is to be sent). You may wish to modify your request to reduce the fee at this time. We will not start processing your request until this written assurance has been received.

Sincerely,

Fred Smith  
FOIA Coordinator for the  
Office of the Secretary

SAMPLE LETTER

ADVANCE PAYMENT - DELINQUENT REQUESTER

Mr. John Doe  
Contract Negotiator  
Doe & Doe  
107 Town Road  
Arlington, VA 22211

Dear Mr. Doe:

We are in receipt of your Freedom of Information Act request dated July 26, 1989, regarding the Department of the Interior's fish hatchery project. The Fish and Wildlife Service estimates that fees for the Bureau to process your request will be \$167.20, \$130 for duplication (1,000 pages at \$.13 per page) and \$37.20 to search for and review the requested records (2 hours at \$18.60 per hour). Moreover, our records show that you owe a balance of \$85 on a previous request. Under the Department of the Interior's regulations (43 CFR 2.20(h)(2)), we will not begin processing your present request until these fees are paid in full (a total of \$252.20).

Please send a check or money order made payable to the Department of the Interior (or name of bureau or office) to (address where payment is to be mailed) or let us know if the \$85 has been paid. In the meantime, your request will be held until this matter is resolved.

If you have any questions, I can be reached on 703-443-1111.

Sincerely,

Sue Thompson  
FOIA Officer  
U.S. Fish and Wildlife  
Service

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New

SAMPLE LETTER

ADVANCE PAYMENT - FEES OVER \$250

Mr. Walter Plank  
Mid-Atlantic Oceanography  
1989 Boardwalk Lane  
Ocean View, DE 19810

Dear Mr. Plank:

This letter is in response to your Freedom of Information Act (FOIA) request of August 14, 1989, concerning the Alameda oil-spill.

Our initial estimate is that fees for the Department to process your request will be \$29,275, calculated as follows:

\$13,000 for duplication	100,000 pages at \$.13 per page
\$16,275 for search and review time	875 hours at \$18.60 per hour

Assuming you are still interested in obtaining these documents, please send a check or money order made payable to the Department of the Interior to (address where payment is to be mailed). If complying with your request exceeds the total estimated above, you will be billed, and if the cost is less, the difference will be refunded to you. You may wish to modify your request to reduce the fee at this time. In accordance with our regulations (43 CFR 2.20(h)), we will not begin processing your request until payment is received.

If you have any questions, I can be reached on 202-208-0000.

Sincerely,

Stewart Johnson  
Departmental FOIA Officer

**SAMPLE LETTER**

**DETERMINING CATEGORY OF REQUESTER**

Ms. Deanie Writ  
P. O. Box 777  
Winton, MN 55796

Dear Ms. Writ:

This is in response to your Freedom of Information Act (**FOIA**) request of March 30, 1989, concerning records related to the Cimarron Strip in Oklahoma.

In your letter you stated that you were an author and that you were doing research for a new book on the Cimarron Strip. However, you did not provide sufficient evidence for the Department to make a determination as to whether you qualify as a "freelance journalist"\* under our regulations (see 43 CFR **2.20(d)(3)(ii)**). Have you published anything previously? Are you affiliated with any publishing house? Do you have a contract with a specific publisher for your book?

In accordance with our regulations (**43 CFR 2.20(f)**), we will not proceed further with your request until we hear from you. If you have any questions regarding this matter, please call me (**202-208-1111**).

Sincerely,

Allison Inge  
FOIA Officer  
Bureau of Land Management

SAMPLE LETTER

FEE WAIVER CLARIFICATION

Mrs. James Manning  
Manning and Manning  
Attorneys at Law  
One Market Street  
Hampton, VA 23662

Dear Mrs. Manning:

This is in response to your Freedom of Information Act (FOIA) request of February 21, 1989, in which you seek access to certain records relating to Contract No. 123456.

In your letter you also sought a fee waiver, however, you did not provide us with any justification as to why disclosure of the requested documents would be in the public interest. The Department's regulations state that "... documents shall be furnished without charge ... if disclosure of the information is in the public interest because it (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) Is not primarily in the commercial interest of the requester" (43 CFR 2.21(a)). We do not see how disclosure of the contract schedules and drawings would meet these criteria.

Our initial estimate is that fees for the Department to process your request will be \$148.60 (1,000 pages of duplication at \$.13 per page and one hour of professional search and review time at \$18.60). If you still wish to obtain these documents, please either explain why you feel disclosure is in the public interest, or provide us with your written assurance of payment for the amount specified above. Also, you may wish to modify your request at this time to reduce the fee. We **will** not proceed further with your request until we hear from you.

Sincerely,

Polly Frye  
FOIA Officer  
Geological Survey

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Chapter 5 FOIA Exemptions

5.3A(2)

(2) Sound grounds exist for invoking an exemption.

B. The exemptions may apply singly or in combination to a given request. If information does not fall under any of the exemptions, there is no basis for withholding. All nonexempt portions of the document must be released, unless inextricably intertwined with the exempt portions.

C. If it is unclear as to whether specific documents fall under any of the exemptions, consult the Bureau FOIA Officer, the designated FOIA attorney in the Office of the Solicitor, or the Departmental FOIA Officer for guidance.

5.4 The Nine Exemptions. Although the examples cited below are normally exempt from disclosure, either in whole or in part, documents should be reviewed on a case-by-case basis. Depending on how current the information is, whether an action is pending or has been completed, and other related circumstances, release may be appropriate. In accordance with 43 CFR 2.16(a)(4), any decision to withhold a record will be made only after consultation with the designated FOIA attorney.

A. Exemption 1. This exemption allows an agency to withhold information concerning the national defense or foreign policy providing that it has been properly classified under EO 12356, National Security Information (dated April 2, 1982), and any agency regulations implementing the Executive Order.

B. Exemption 2. Exemption 2 **relates** only to the internal personnel rules and practices of an agency. It encompasses two distinct categories of records:

(1) Those dealing with internal matters of a relatively trivial nature for which there is no legitimate public interest or benefit (referred to as "low 2"). This exemption is applicable when it would impose an administrative burden on the agency to process the request. Examples may include:

(a) Leave slips and time and attendance sheets:

(b) Routing slips, surname initials, copy distribution information, and data processing notations;

(c) Brief references to previous communications:  
and

(d) Agency policies and procedures relating to the use of parking facilities, lunch hours, sick and annual leave, etc.

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Chapter 5 FOIA Exemptions

5.1

5.1 General. Under the FOIA there are nine exemptions which serve as a basis for withholding information from the public. The nine exemptions are listed below and discussed at length in this Chapter.

Exemption 1 - Matters of National Defense  
or Foreign Policy

Exemption 2 - Internal Personnel Rules  
and Practices

Exemption 3 - Information Exempted by  
Other Statutes

Exemption 4 - Trade Secrets, Commercial or  
Financial Information (Confidential Business Information)

Exemption 5 - Privileged Interagency or **Intra-**  
agency Memoranda or Letters

Exemption 6 - Personal Information Affecting  
an Individual's Privacy

Exemption 7 - Records Compiled for Law Enforcement  
Purposes

Exemption 8 - Records of Financial Institutions

Exemption 9 - Geological and Geophysical  
Information Concerning Wells

5.2 Discretionary Release. An exempted record may be released to a requester when, in the bureau's judgment, the interest of the Government would not be jeopardized, unless disclosure is restricted by statute or Executive order. Disclosure of documents protected under exemptions 1, 3, 4, and 6 will in most instances be restricted by a statute or an Executive order. Such documents are not subject to discretionary release. Discretionary releases will be made only after consultation with the designated FOIA attorney (see 43 CFR **2.16(a)(4)**).

5.3 Decisions to Withhold Information.

A. Bureaus will withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order, or



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Chapter 5 FOIA Exemptions

**5.4C(2)(f)**

(f) National Materials and Minerals Policy, Research and Development Act of 1980, 30 U.S.C. **1604(f)**;

(g) National Historic Preservation Act Amendments of 1980, 16 U.S.C. **470w-3**;

(h) Indian Mineral Development Act of 1982, 25 U.S.C. **2103(c)**;

(i) Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301;

(j) Indian Gaming Regulatory Act, 25 U.S.C. 2701;

(k) Rule 6(e), Federal Rules of Criminal Procedure (Grand Jury), 18 U.S.C. Appendix:

(l) Juvenile Justice Delinquency and Prevention Act of 1974, as amended, 18 U.S.C. 5038; and

(m) Inspector General Act of 1978, **as** amended, 5 U.S.C. Appendix 3.

(3) The Privacy Act and the Trade Secrets Act are not exemption 3 statutes. Information involving privacy or commercial/financial interests would be considered under exemptions 6, **7(C)**, and 4, respectively.

(4) Examples of information withheld under exemption 3 include:

(a) Material collected by investigators and submitted to a grand jury (Rule **6e**);

(b) Witness interviews (Inspector General Act of 1978);

(c) The identity of employee whistleblowers (Inspector General Act of 1978);

(d) The location of caves and artifacts found (Federal Cave Resources Protection Act of 1988); and

(e) Information related to archaeological and/or historic resources (Archaeological Resources Protection Act of 1979).

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Chapter 5 FOIA Exemptions

5.4B(2)

(2) Those of a more substantive nature, the disclosure of which **would allow** circumvention of a statute or an agency regulation, or impede the effectiveness of the agency's activities (referred to as "high 2"). Examples include:

(a) Agency procedures, manuals and instructions involving investigatory or security matters, e.g., law enforcement or Inspector General manuals on how to conduct an investigation, audit guidelines, or security techniques; and

(b) Examination questions and answers; crediting plans used in determining the qualifications of a candidate for employment, advancement, or promotion; and criteria for interviewing prospective employees. Release of this kind of information would give someone an unfair advantage in the job selection process and may require the office to create replacement documents.

C. Exemption 3.

(1) This exemption allows an agency to withhold records that are specifically exempt from disclosure by other Federal statutes. Information may be withheld only if the statute--

(a) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(2) Exemption 3 statutes applicable to DOI include:

(a) Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1350 thru 1352;

(b) Federal Coal Leasing Act Amendments of 1976 (this includes the provisions of the Mineral Leasing Act), 30 U.S.C. 201(b)(3) and 208-1(b) thru (e);

(c) National Park System - Improvement in Administration, 16 U.S.C. 470a(a)(4);

(d) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1257, 1258, and 1262;

(e) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);

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Chapter 5 FOIA Exemptions

**5.4D(2)(b)(iii)(C)**

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National Parks and Conservation Association v. Morton, 498 F.2d 765, 770, n. 17 (D.C. Cir. 1974); and Critical Mass Energy Project v. NRC, 830 F.2d 278 (D.C. Cir. 1987).

(3) Government documents may be protected under exemption 4 if they contain summaries or reformulations of information supplied by an outside source.

(4) In accordance with EO 12600, Predisclosure Notification Procedures for Confidential Commercial Information (dated June 23, 1987), and 43 CFR 2.15(d), bureaus will notify submitters when their data is requested under the FOIA to determine if the material is confidential and exempt from disclosure (see paragraph 3.18 of Chapter 3).

(5) Bureaus must maintain adequate records to support their decision to disclose commercial or financial information in case a reverse FOIA suit is filed.

(6) Examples of information withheld under exemption 4 include:

(a) Commercial or financial information received in confidence in connection with bids, contracts, or proposals:

(i) Assets, income, profits, losses, and expenditures;

(ii) Names of consultants, subcontractors, and suppliers: performance, cost, and equipment information:

(iii) Labor costs, profit margins, and competitive vulnerability;

(iv) Business sales statistics, research data, and technical designs;

(v) Financial statements and balance sheets;

(vi) Technical proposals in whole or in part:

(vii) Price negotiation **memos**;

(viii) Names of customers and amounts and discounts offered to them;

(ix) Resumes and other employee-related information such as what the company pays its employees;

(x) A company's internal organization chart;

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Chapter 5 FOIA Exemptions

5.4B(2)

(2) Those of a more substantive nature, the disclosure of which **would allow** circumvention of a statute or an agency regulation, or impede the effectiveness of the agency's activities (referred to as "high 2"). Examples include:

(a) Agency procedures, manuals and instructions involving investigatory or security matters, e.g., law enforcement or Inspector General manuals on how to conduct an investigation, audit guidelines, or security techniques; and

(b) Examination questions and answers; crediting plans used in determining the qualifications of a candidate for employment, advancement, or promotion; and criteria for interviewing prospective employees. Release of this kind of information would give someone an unfair advantage in the job selection process and may require the office to create replacement documents.

C. Exemption 3.

(1) This exemption allows an agency to withhold records that are specifically exempt from disclosure by other Federal statutes. Information may be withheld only if the statute--

(a) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(2) Exemption 3 statutes applicable to DOI include:

(a) Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1350 thru 1352;

(b) Federal Coal Leasing Act Amendments of 1976 (this includes the provisions of the Mineral Leasing Act), 30 U.S.C. 201(b)(3) and 208-1(b) thru (e);

(c) National Park System - Improvement in Administration, 16 U.S.C. 470a(a)(4);

(d) Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1257, 1258, and 1262;

(e) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);

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Chapter 5 FOIA Exemptions

5.4E(1)(b)

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includes documents prepared by outside consultants at the request of the agency and recommendations or advice from Congress or another Federal agency. It may be possible, in certain circumstances, to protect communications between Federal and State agencies. However, this should be done only after consultation with the designated FOIA attorney.

(2) Four of the privileges commonly invoked under exemption 5 are discussed below.

(a) Deliberative Process Privilege.

(i) This privilege is designed to protect the quality of the agency's decisionmaking process, i.e.:

(A) To encourage candid and frank discussions among agency officials;

(B) To protect against premature disclosure of proposed policies before they are finally adopted; and

(C) To avoid public confusion that might be caused by disclosing reasons and rationales that were not ultimately the basis for an agency's action.

(ii) In order to use this privilege, the material must be predecisional and part of the decisionmaking process in that it includes opinions, recommendations, or deliberations on legal or policy matters. Generally, protected information is analytical and subjective rather than factual. In determining whether a document is predecisional, the following should be considered:

(A) The document's language and its place in the decisionmaking process. Predecisional, deliberative process documents are written prior to the agency's final decision and usually contain recommendations or opinions, or represent the agency's tentative position on an issue. They typically discuss the pros and cons of the adoption of one viewpoint over another.

(B) The decisionmaking authority of the person issuing the document.

(C) The direction in which the document flows in the decisionmaking chain. Documents written by a subordinate and transmitted to a superior are more likely to be predecisional than those written by a person who is in a position to make the final decision for the agency.

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Chapter 5    FOIA Exemptions

**5.4D**

D.    Exemption 4.

(1) Exemption 4 protects trade secrets and commercial or financial information obtained from a person which is privileged or confidential. This exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government and the interests of the Government in receiving continued access to such data. If information is generally available to the public or would be made available if requested from the submitter, then exemption 4 protection has been waived.

(2) The following criteria will be used to determine whether exemption 4 is applicable:

(a) Trade Secret. Does it involve a trade secret (a formula, plan, process, or device used to make, prepare, or process a commodity)? There must be a direct relationship between the trade secret and the productive process.

(b) Commercial or Financial Information.

(i) Do the records contain commercial or financial information?

(ii) Was the information obtained from a person? A person may be a corporation, association, or public or private organization--anyone other than an agency of the Federal Government (including Indian tribes).

(iii) Is it privileged or confidential? Commercial or financial information is determined to be confidential if its disclosure would be likely to:

(A) Impair the Government's ability to obtain necessary information in the future. The agency must be able to demonstrate that the information was provided voluntarily and that the submitter would not have provided it if the submitter had believed that the material would be subject to disclosure;

(B) Cause substantial competitive harm to the person/business from whom the information was obtained. If no competition exists (i.e., the company is the sole producer of a given product), then the information cannot be withheld under the premise that release would cause competitive harm; or

(C) Harm other protected interests which are not encompassed by (A) or (B), above. For example, see

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Chapter 5 FOIA Exemptions

**5.4E(2)(c)**

privilege is designed to protect the client. Unlike the attorney work-product privilege, the use of the attorney-client privilege is not limited to instances where litigation is expected. However, the information shared between the attorney and client must be confidential. If it is shared with persons outside the attorney-client relationship, exemption 5 may no longer be used to protect the information.

(d) Government Commercial Information Privilege.  
This privilege is available to the Government for information that it generates 'in the course of its business dealings, such as the process leading up to the award of a contract, or for appraisal information associated with the acquisition of real property. The premise is that premature release of such information would put the Government at a competitive disadvantage. However, once the contract has been awarded, property acquired, or the offer withdrawn, the privilege expires. The privilege applies to trade secrets or other confidential research, development, or commercial information.

(3) Examples of materials covered by exemption 5 include:

(a) Advisory opinions, recommendations, and deliberations which are part of the decisionmaking process;

(b) Draft documents regardless of whether they differ from the final version:

(c) Information of a speculative, tentative, or evaluative nature on such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to a private entity in its dealings with the Government, or would impede the activities of the agency:

(d) Ratings given to job applicants by panel members and the names of panel members (ratings may be released if doing so will not reveal the identities of the panel members; the identities of panel members may be released if doing so will not reveal the ratings they gave);

(e) Financial formulas used to determine the financial capability of a contractor;

(f) Appraisals generated by the Government or on its behalf:

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Chapter 5    FOIA Exemptions

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**5.4D(6)(a)(xi)**

(xi)    Letters of reference from private sector clients:

(xii)   Approach and methodology for accomplishing work set forth in the solicitation: and

(xiii)   Plant facility reports.

(b) Personal statements given in the course of an inspection, investigation, or audit, when such statements are received in confidence from the individual and retained in confidence because they meet the criteria in D(2), above.

(c) Scientific and manufacturing processes or developments containing technical or scientific data submitted with an application or report while research is in progress.

(d) Solid mineral information, including production data and royalty statistics.

(e) Geophysical information--location of oil and gas wells, drilling plans, exploration data, geologic reports, maps, etc.

(f) Financial information maintained on Indian tribes. (For purposes of the FOIA, Indians are considered persons outside the Government, as defined in D(2)(b)(ii), above.)

Note: If the information is not sensitive, i.e., it is published **in the** company's annual report or is available through the Securities and Exchange Commission, exemption 4 may not be invoked to protect it.

E.    Exemption 5.

(1) Exemption 5 is designed to protect those interagency and intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency (i.e., those records which would not be made available routinely through the discovery process--the means by which the parties involved in a lawsuit exchange information prior to a hearing or trial).

(a) This exemption applies to inter- or intra-agency records--records that are transmitted within or among DOI components, or between or among Federal agencies.

(b) In some circumstances, it may also apply to documents generated or transmitted outside of an agency. It

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Chapter 5 FOIA Exemptions

**5.4F(1)(a)**

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(a) Examples of "similar files" include:

(i) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be, or has been taken:

(ii) Aircraft and personal injury report files;

(iii) Files containing information related to permits, applications, and licenses: and

(iv) Reports of investigation.

(b) Records concerning a business or association may not be withheld under exemption 6. However, where the business is owned and operated by an individual and the records of the business are in essence the records of the individual, the exemption may apply.

(2) The next step is to determine whether a privacy interest exists. Would disclosure of the information to the public violate the privacy of the subject of the information? Could it cause injury or embarrassment to the individual?

(3) In accordance with the March 1989 Supreme Court decision in Reporters Committee for Freedom of the Press v. Department of Justice (109 S. Ct. 1468 (1989)), the following steps should be followed in making decisions under exemptions 6 and 7(C):

(a) Determine whether a personal privacy interest is involved. There must be a privacy interest in the requested information for any further consideration of privacy-exemption protection to be appropriate. To qualify, the information must involve the privacy interest of an identifiable, living person (see (5), below). If a personal privacy interest does not exist, then exemptions 6 and 7(C) do not apply.

(b) Determine whether a public interest is involved. Consider how disclosure would benefit the general public, but only in light of the content and context of the requested document. The requester's particular purpose, circumstances, and proposed use should no longer be taken into account, except to the extent that it may coincide with an identifiable public interest. If disclosure to the general public would not serve a public interest, then any identified

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Chapter 5 FOIA Exemptions

**5.4E(2)(a)(iii)**

(iii) The deliberative process privilege generally may not be used to withhold purely factual material or the factual portions of deliberative documents. The factual portion must be released where it can be segregated from the remainder of the document. However, if the manner of selecting or presenting those facts would reveal the deliberative process or if the facts are inextricably intertwined with the decisionmaking process, the facts may be withheld.

(iv) Drafts of documents are commonly exempt under the deliberative process privilege. They must be part of the decisionmaking chain and are usually prepared prior to the adoption of a final agency position. Drafts are reflective of the give and take of the review process that leads to a decision--agency officials need to be able to talk and discuss issues freely. Labeling a document "Draft" does not in itself protect the material.

(v) The deliberative process privilege may be used to protect a draft regardless of whether it differs from the final version providing the agency is able to show that it is part of the decisionmaking process and describes the role that the document plays in that process. The only exception is if an agency cites a draft document as binding precedent, adopts it as working agency law, or incorporates it by reference in a final agency decision. If several recommendations are presented in a draft and only one is adopted, the others may be withheld under exemption 5.

(vi) Final and postdecisional documents which discuss, analyze, or explain established policies and decisions may not be withheld under this privilege.

**(b) Attorney Work-Product Privilege.** This privilege protects documents and other memoranda prepared by an agency attorney in anticipation of litigation, including administrative proceedings. It covers all documents prepared by an attorney or under his/her supervision, such as reports prepared by a consultant or a program employee. Litigation need not have started but it must be reasonably contemplated, i.e., a specific claim must exist that is likely to lead to litigation. The privilege still applies after a case has ended **or** even if it never was begun, as long as it was reasonably contemplated. Attorney work-product documents may be withheld in their entirety.

**(c) Attorney-Client Privilege.** This privilege applies to confidential communications between an attorney and his/her client, usually an agency employee, relating to a legal matter for which the client has sought professional advice. The

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Chapter 5 FOIA Exemptions

5.4F(4)

(4) In accordance with Reporters Committee, the identity of an FOIA requester cannot be taken into consideration in determining what should be released. An exception to this rule is that a bureau may not invoke exemption 6 or 7(C) where the privacy interest to be protected is the requester's. For example, if a requester asks for a copy of a study or report--a record not covered by the Privacy Act--and it contains his/her home address, the bureau cannot withhold the information from the requester. Normally these exemptions cannot be used to withhold information from a requester that he/she would be entitled to under the Privacy Act (information about himself/herself).

(5) Exemptions 6 and 7(C) may not be used to protect the privacy of a deceased person; however, in some cases, they may be exercised to protect the family of the deceased.

(6) After the personal identifying information has been deleted, all reasonably segregable, nonexempt portions of the requested records must be released.

(7) Examples of exemption 6 material may include:

(a) Personal identifying information such as name, social security number, military service number, home address and telephone number, age, place and date of birth, marital status, an individual's party or union affiliation, educational background (not directly related to the position held), and work experience (not directly related to the professional qualifications for the position held), details of health and insurance benefits, allegations of misconduct or arrests, and information concerning or provided by relatives and references:

(b) Payroll information--number of deductions and the amounts, fringe benefit payments, number of withholding exemptions and net wages, hours worked, and rate of pay per hour (not valid for Wage Grade employees);

(c) Financial information such as an individual's credit rating and personal credit card numbers;

(d) The following types of personnel-related information:

(i) Performance appraisals,

(ii) Supervisory evaluation of a candidate for a particular position,

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**5.4E(3)(g)**

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(g) Advisory material in documents prepared on behalf of **the agency** by consultants;

(h) Cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government;

(i) Preaward and market surveys;

(j) Facts divulged by a client to his/her attorney in confidence and opinions given by an attorney to his/her client based upon those facts;

(k) Information gathered by agency investigators under the direction of agency attorneys (work-product);

(l) Memoranda that advise an agency of the types of legal challenges it may face in light of a proposed program, potential defenses available to the agency and the likely outcome;

(m) Documents relating to possible settlement of litigation;

(n) The nonfactual portions of predecisional staff papers, containing staff evaluations, advice, opinions, or suggestions;

(o) Records that are exchanged among agency personnel or with other agencies in preparing for litigation or an administrative proceeding; and

(p) Recommendations contained in official reports of inspection, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of **DOI's** components.

F. Exemption 6. This exemption permits the withholding of information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(1) To warrant protection, the information must fall within the category of personnel, medical, and similar files. The term "similar files" applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal.

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Chapter 5 FOIA Exemptions

**5.4G(4)**

(4) **Could** reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(Examples --any information which might identify a confidential source such as interviews, affidavits, or another witness' reference to the source)

(5) Would disclose guidelines, techniques, and procedures for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(Examples --certain portions of the Inspector General's manual, information on interviewing techniques, and conducting surveillances and investigations)

(6) Could reasonably be expected to endanger the life or physical safety of any individual..

Note: Under certain circumstances, records concerning pending investigations and informants may be considered as outside the scope of the FOIA (5 U.S.C. 552(c)(1) and (2)). These exclusions are discussed in the DOJ FOIA Case List. In such instances, the designated FOIA attorney should be consulted.

H. Exemption 8. Exemption 8 covers matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions such as the Federal Reserve Board or the Office of the Comptroller of the Currency. It generally does not apply to records in DOI's possession. Examples of documents withheld are:

(1) Bank examination reports--those evaluating a bank's stability, and its financial condition and operations, and

(2) Reports examining a bank's compliance with consumer laws and regulations.

I. Exemption 9. This exemption pertains to geological and geophysical information and data (including maps) concerning wells. Exemption 9 has been invoked to withhold well logs and

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Chapter 5    FOIA Exemptions

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**5.4E(3)(g)**

(g) Advisory material in documents prepared on behalf of **the agency** by consultants;

(h) Cost estimates, technical ratings and evaluations, and recommendations for award prepared by the Government;

(i) Preaward and market surveys;

(j) Facts divulged by a client to his/her attorney in confidence and opinions given by an attorney to his/her client based upon those facts;

(k) Information gathered by agency investigators under the direction of agency attorneys (work-product);

(l) Memoranda that advise an agency of the types of legal challenges it may face in light of a proposed program, potential defenses available to the agency and the likely outcome;

(m) Documents relating to possible settlement of litigation:

(n) The nonfactual portions of predecisional staff papers, containing staff evaluations, advice, opinions, or suggestions;

(o) Records that are exchanged among agency personnel or with other agencies in preparing for litigation or an administrative proceeding: and

(p) Recommendations contained in official reports of inspection, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one of **DOI's** components.

F.    Exemption 6.    This exemption permits the withholding of information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(1) To warrant protection, the information must fall within the category of personnel, medical, and similar files. The term "similar files" applies to any file or document which pertains to a specifically identifiable individual and contains information that is personal.

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Chapter 5 FOIA Exemptions

5.4F(3)(b)

privacy interest should be protected under the applicable exemption.

(c) Determine whether the identified public interest qualifies for balancing. Would disclosure of the information shed light on the agency's performance of its statutory duties? Information that reveals little or nothing about the operations or activities of the Government does not meet the new public interest standard, and as such, should be protected.

(d) Balance the personal privacy interest against the public interest. If it is determined that a public interest qualifying under the Reporters Committee standard is present, then that interest should be balanced against the personal privacy interest--the benefit to the public must be weighed against the potential harm to an individual's personal privacy. If the privacy interest is greater, then the information should be protected; if the public interest is greater, then the material should be released.

(i) Some information, such as the "rap sheets" in Reporters Committee, may be appropriate for "categorical withholding." It may be determined that a certain type of information is always protectable under exemption 7(C) without regard to individual circumstances.

(ii) A privacy interest may still exist even though personal information has been made available to the general public at some place and point in time. In such situations, the designated FOIA attorney should be consulted.

(iii) A requester's particular knowledge of the information in question should not be considered in deciding FOIA requests. For example, an agency should not disclose information to the spouse or relative of the subject individual that they would normally withhold from any member of the general public.

(iv) Exemption 6 material may be released with the prior written consent of the individual (subject of the record).

(v) The fact that disclosure of certain information about a particular individual to the media might provide some public interest does not in and of itself meet the test if it reveals nothing about the programs or activities of the agency.

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Chapter 5 FOIA Exemptions

**5.4F(7)(d)(iii)**

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(iii) Identities and qualifications of unsuccessful job applicants,

(iv) The knowledge, skills, abilities and personal characteristics of unsuccessful applicants,

(v) Referral lists of qualified candidates and the roster of applicants for a particular position, except for the successful candidate,

(vi) Reasons for job termination,

(vii) Results of a complaint by an employee against his/her supervisor, and

(viii) Letters of reprimand and suspension notices;

(e) Mailing lists that contain personal information where the release would not shed light on the operations or activities of the Government (see Reporters Committee); and

(f) Records on an employee's medical condition, history, and health test results.

**G. Exemption 7.** Exemption 7 protects records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information--

(1) Could reasonably be expected to interfere with enforcement proceedings;

(Examples-- investigative files, criminal, civil or administrative actions pending, background security investigations, affidavits, and audit reports where an investigation is involved)

(2) Would deprive a person of a right to a fair or an impartial adjudication;

(Examples--a report which may result in a disciplinary action involving a Department employee)

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy (see **F(3)**, above);

(Examples--names of special agents, informants, witnesses, interviewees, and "rap sheets")



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Chapter 6 POIA Appeals

6.2B

B. The foregoing distribution is made to give appropriate officials advance notice of FOIA appeal issues under consideration, and to permit them to participate in the decisionmaking process. Officials desiring to provide information concerning the appeal should contact either the Assistant Solicitor for Administrative Law and General Legal Services, SOL-GL, or the FOIA Appeals Officer.

6.3 Review of Appeals. The legal and administrative review of FOIA appeals will require that copies of the documents at issue be provided to SOL. Officials who have made decisions on FOIA requests that are subsequently appealed will ensure that upon request copies of any pertinent records are sent to SOL promptly.

6.4 Final Decisions on Appeals. Final decisions on appeals are made for the Department by the Assistant Secretary - Policy, Management and Budget or his/her delegate, with the advice and counsel of SOL. The Director, PMI, has been delegated authority to make such decisions on FOIA appeals (see 212 DM 9.3). In certain circumstances, appeals may be decided at a higher level. Copies of final decisions on FOIA appeals are distributed to the same officials listed in paragraph 6.2A, above. The copies are provided for information and monitoring purposes, and may contain instructions to Departmental officials regarding any **followup** action required to complete the response.

6.5 Index of FOIA Appeal Opinions. The Law Library maintains an automated index of legal opinions rendered by SOL in FOIA appeal decisions. The index-can be searched in various ways to obtain information on prior Department positions concerning the release or withholding of various types of records, fee waivers, and FOIA procedural matters. Inquiries and requests for searches can be made to the Librarian in the Law Library. Copies of **FOIA** appeal opinions may be made in the Law Library.

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**maps, seismic reports,** and other exploratory findings of oil companies.

5.5 Waiver of Exemption. Depending upon the circumstances of the release, an agency may lose the right to invoke an exemption even when it is otherwise warranted, if the information has been disclosed previously. As a general rule, once a record has been released under the FOIA, it cannot be withheld from any subsequent requesters. A waiver does not apply in the following circumstances:

A. When records are circulated within an agency or between Federal agencies;

B. When material is disclosed to Congress (see paragraph **1.7A(2)** of Chapter 1) or an advisory committee;

C. When an agency must release a document under limited and controlled conditions, e.g., release of documents under a protective order in an administrative proceeding:

D. Where prior disclosure was unauthorized or unlawful, e.g., a leak: and

E. Where disclosure is necessary to carry out a Government purpose, e.g., disclosure of an investigatory report to a State.

Note: Close coordination with the designated FOIA attorney is necessary in these instances.

5.6 Special Rules Governing Certain Information **Concerning** Coal Obtained Under the Mineral Leasing Act. (See 43 CFR 2.22.)

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Chapter 6 FOIA Appeals

6.1

6.1 FOIA Appeal Rights. Under the Department's regulations (43 CFR 2.181, requesters have the right to file an administrative appeal with the Department when:

- A. Records have been withheld either partially or entirely:
- B. A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;
- C. A fee waiver request has been denied: or
- D. A decision on a request has not been communicated to the requester within the prescribed time limits.

6.2 Initial Notification.

A. The initial denial letter must advise the requester of the proper procedures for filing an FOIA appeal with the Department. Upon receipt of an appeal, the FOIA Appeals Officer, PMI, ensures that a copy is distributed to:

(1) The Division of General Law, SOL-GL, for legal review and preparation of a legal opinion and recommendation on the appeal:

(2) The pertinent Assistant Secretary in whose program area the request and response action originated:

(3) The pertinent bureau or office director involved in the request and appeal action:

(4) If applicable, the pertinent field official who was responsible for the handling of the initial request and subsequent response;

(5) The Bureau FOIA Officer:

(6) The Office of Public Affairs in the Office of the Secretary; and

(7) The Departmental FOIA Officer.

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Chapter 7 Report to Congress

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7.1

7.1 Annual Report to Congress.

A. On or before February 1, bureaus are required to submit a report covering FOIA activities for the preceding calendar year to the Departmental FOIA Officer, PMI. Bureaus will ensure that the information is accurate and complete and is in compliance with the requirements set forth in 383 DM 15.6.

B. The Departmental FOIA Officer is responsible for preparing **DOI's** annual report due to Congress by March 1. Reports Control Symbol CON-74-013 has been assigned to this report.

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

February 10, 1999

In Reply Refer To:  
1270 (520)P  
Affects DW-96-4005  
& Change 1  
BLM Manual 1270-2

EMS TRANSMISSION 02/12/99  
Instruction Memorandum No. 99-063  
Expires: 9/30/00

To: All WO Office and Field Office Officials

From: Assistant Director, Information Resources Management

Subject: Cost Recovery Fee Schedule for Public

This Instruction Memorandum (IM) reissues the cost recovery fee schedule which expired on October 1, 1998, to provide field office Information Access Centers with current guidance on collecting costs for sales to members of the public. Office of Management and Budget (OMB) Circular A-130 permits Federal agencies to collect the actual costs for providing copies of information to members of the public. Consistent with OMB guidance, the Bureau of Land Management (BLM) has traditionally sold copies of records and information to members of the public.

Attached is the BLM Cost Recovery Fee Schedule. Please note that it does not include costs for copies of data and reports that will be generated from the land and resource information systems. Cost Recovery rates for these systems will be issued separately.

Although the BLM offices have attempted to standardize as much as possible, some offices may still have unique equipment and data. Circumstances can occur when a member of the public requests copies of information or data for which no fee is listed. When these unique situations occur, the State Records Administrator should develop an estimate of the costs involved. Please forward the suggested fee and justification to Wendy Spencer, Bureau Records Administrator for review. Recurring requests that are common to more than one office will be placed on an updated Cost Recovery Fee Schedule and distributed by a future IM.

If you have any questions about this IM, please contact Wendy Spencer at (303) 236-6642.

Signed By:  
Michael D. Nedd  
Acting Assistant Director  
Information Resources Management

Authenticated By:  
Robert M. Williams  
Directives, Records  
& Internet Group, WO-540

1 Attachment  
1- Cost Recovery Fee Schedule (6 pp)

### Cost Recovery Fee Schedule

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>STANDARD COPIES</b> 8 ½ x 11 up to Appendix A	\$0.13/p on a copy machine	All paper copies, sized as shown, reproduced	Dept. Regulations 43 CFR Part 2,
<b>COLOR COPIER COPIES</b> 8 ½ x 11 8 ½ x 14 11 x 17	\$0.20/p \$0.30/p \$0.40/p	All paper copies, sized as shown, reproduced on a color copier	Rates revised per figures from the Oregon State Office
<b>NON-STANDARD SIZED COPIES</b> (Any size large on a copy machine than Standard copies) (i.e., copies from 2510 or 2520)	\$2.75/p	All paper copies, sized as shown, reproduced	
<b>XEROX 2080 or EQUIVALENT COPIES</b>	\$4.20/p	Paper copies produced by a Xerox 2080 or equivalent machine	
<b>FICHE COPIES (STANDARD/NON-STANDARD SIZED)</b>	\$1.10/p	All paper copies produced from micrographics reader/printer	
<b>MICROFILM AND APERTURE CARD COPIES</b>	\$1.10/p	All paper copies produced from micrographics reader/printer	
<b>FAX TRANSMISSIONS</b>	\$1.10/p + Research time + Any duplication fee	Documents sent via fax machine	

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>RESEARCH</b> (for non-FOIA requests)	\$18.60/hr (Computer Professional)	Automated data compilation, manipulation, or searching Information Access Center \	
	\$ 8.40/hr (Clerical or IAC employee) \$ 0/under 1/4 hour	Total time taken to locate a record when such time exceeds 15 minutes (Charge by 15 minute increments)	
<b>SEARCH/REVIEW</b> (for FOIA Dept. requests)	\$18.60/hr \$ 9.20/hr	Professional Clerical	43 CFR Part 2 Appendix A Regulations
<b>APERTURE CARDS AND FICHE DUPLICATES</b>	\$.50/fiche	Duplicate Celluloid	
<b>MAPS (Published)</b>	Various Prices	Maps produced by other agencies	Includes USGS at their established price
<b>MAPS (Published)</b>	\$4/map	All other maps sold to the public	Will remain consistent with established USGS prices for sales to individuals
<b>O&amp;G SALES LIST/ GEOTHERMAL SALES LIST/ NONCOMPETITIVE LANDS AVAILABLE LIST</b>	\$10/Over 250 pages \$5/ up to 250	Paper copies of either Sales or Results list	Policy set forth by WO Fluid Mineral Div.
<b>O&amp;G RESULTS LIST GEOTHERMAL RESULTS LIST - COMP &amp; NONCOMP</b>	Free for one page. \$5 for more than one page		Rate for more than one page is base on BLM's experience
<b>PUBLICATIONS</b>	Actual Cost		

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>INFORMATION ACCESS CENTER COMPUTER PRINTOUTS</b>	\$.75/p	Hard copy of print outs produced in the Information Access Center on printer from computer	<b>Only for</b> Case from Recordation, ORCA, Mining Claim Recordation online reports (i.e., Serial Register/Case Abstract Page) Note: See fee schedule for cost of copies from land and resource information systems
<b>ALL PLOTTER</b>	\$7.50/ paper product  \$16/ mylar product  +\$8 Administrative fee rate	28 by 32 inch paper copy 28 by 32 inch mylar copy	Minimum rates based on BLM experience Subject to revision based on additional experience Rate added to paper and mylar products
<b>PATENTS</b>	\$15/per patent	Paper copy of Patent from bound volume at ESO only	
<b>CERTIFICATION OF RECORD</b>	\$.25/per certification		Set fourth in 43 U.S.C. 1460
<b>MAILING COSTS</b>	Actual Cost of postage plus cost of mailing container		Rates can be determined using Postal Service Rate Chart, "Postage Rates, Fees, and Information" + rates for mailing containers
<b>\$3 MINIMUM COLLECTION</b>	The \$3 minimum fee waiver is discretionary for mail, telephone, and fax requests.		
<b>AERIAL PHOTOGRAPHS, ORTHOPHOTO QUADS, AND 7.5 MINUTE QUADS</b>	The BLM will continue to coordinate with the USGS on the cost recovery rates for these products. The USGS rate for 7.5 Minute Quads is \$4 per quad.		



PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>RETRIEVING INFORMATION</b>	The retrieval of information from one BLM office to another will be accomplished electronically. No fees will be collected for on-line retrieval at this time. Cost recovery rates will apply to copies requested by the public.		
<b>WEB SITE INFORMATION AND DATA BASES PROVIDED FOR THE PUBLIC</b>	No charge	Information and data bases, such as GCDB data or GIS data provided on web sites for the convenience of the public	Offices may elect to place publicly available data bases on web sites for free public viewing if more cost effective than handling traditional requests for information
<b>LAND AND RESOURCE INFORMATION SYSTEMS REPORTS</b>	See fee schedule for cost of copies from land and resource information systems		
<b>REQUESTS FOR DATA/ INFORMATION FROM MICROCOMPUTER</b>	\$8 Admin Fee + Research time (Personnel time required to process request at the automated data rate) + Cost of Floppy, Cassette, or CD-ROM + \$.13 per page (if provided in paper		

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>Rates for ADP Requests from PRIME Level A Computer, AIX, ARC/INFO on the SUN workstations</b>	\$8.00 Admin Fee +CPU and I/O for Prime only \$0.0019 per CPU seconds (equivalent to \$.11 per CPU minute) \$0.0027 per I/O second (equivalent to \$.16 per I/O minute) + Research Time (Personnel time required to process request at the automated data rate) + Cost of Cassette, Tape, Floppy disc, cassette tape, CD-Rom, and other media used to disseminate electronic information. + \$.13 per page for 8 1/2" X 11 up to 11" X 15" inch printouts. See plotter rates for plotter outputs. + Postage		
<b>Rates for Eastern States (ES) General Land Office Optical System (GLO)</b>			
GLO retrieval	\$2 cost/query session minute		
Fax Server			
	\$.13/p		
Paper (Same as Standard Copies)			
	\$.13/p		
<b>Rates for ADP Request from DPS 6+*</b>	\$8 Admin Fee + \$.04 per Kilobyte + Research Time (see Research Time above) + Cost of Cassette, Tape, or Floppy + Postage		
<b><u>Raw Data; No formatting</u></b>			

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>Rates for ADP Request from DPS 6+ <u>Data with Special Formatting</u></b>	\$8 Admin Fee + \$.08 per Kilobyte + Research Time (see Research Time above) + Cost of Cassette, Tape, or Floppy + Postage		
<b>Rates for ADP Request from DPS 6+ <u>Hard Copy Printouts</u></b>	\$8 Admin Fee + \$.04 per kilobyte + Research Time (see Research Time above) + \$.13 per page + Postage		
<b>Rates for DPS 8000* Batch Processing</b>	Processor time \$0.9657 /MINUTE Core memory\$0.0007 /K WORDS I/O channel time	\$0.0585 /MINUTE	
	Tape drives \$0.9722 /TAPE DRIVE Sysout: printer	\$0.0586 /K LINES	
	Sysout: punch \$2.8518 /K RECORDS Jobs	\$0.0000 /JOBS*	
<b>Time Sharing</b>	Connect time \$0.0417 /MINUTE Disk I/O	\$0.0000 /REQUEST*	
	Memory time \$0.0000 /BLK X MILLISEC/1K*		
	Transmission \$0.0000 /CHARACTER* Sessions	\$0.4728 /SESSION	

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
DMIV-TP	Physical I/O \$0.0003 /PHYSICAL I/O Transactions \$0.0046 /TRANSACTION Elapsed time \$0.6858/MINUTE		
Communications	Disk storage, on-line	\$0.0032 /LLINK USED/DAY	
	Disk storage, off-line	\$0.0000 /LLINK ALLOCATED*	
	Tape library, on-site	\$0.0000 /REEL*	
	Tape library, off-site	\$0.0000 /REEL*	
Application Labor	Operation & maintenance	\$22.6555 /HOUR	
	Development	\$46.6116 /HOUR	

### TABLE OF EQUIVALENTS

Platform	Value	Bytes
DPS 6+	Sectors	256 Bytes
Prime	Record	2,048 Bytes
DPS 8000	Llink	1,280 Bytes
DPS 8000	Blink	76,800 Bytes
1,026 Bytes	1 Kilobyte	